

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

April 20, 2023

The Orleans Board of Health (BOH) convened this meeting in the Nauset Room of the Orleans Town Hall on Thursday, April 20, 2023. This was a hybrid meeting.

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

Also present were: Health Agent Alexandra Fitch; Orleans Dept. of Public Works (DPW) Director Tom Daley; Jim O’Reilly (J.M. O’Reilly & Assoc.); Stephanie Sequin (Ryder and Wilcox) and Elaine Flanagan (owner of 190 Barley Neck Road); Erin Stratton (owner, 30 Locust Road – via ZOOM); and Orleans Select Board liaison Kevin Galligan.

Chairman Joseph Hartung called this meeting of the Orleans Board of Health 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 Hearing: Proposed Amendments to the Use of Orleans Solid Waste Facility Regulations (OSSDR)s.

Chairman Hartung opened the hearing to the public by explaining that the notice was advertised in the *Cape Cod Times* on April 9, 2020 and copies of proposed amendments have been available in the town hall and in the meeting room.

Ms. Fitch referred to Town Regulations sections 185-15 (b) fees and eligibility and (c) itemized costs.

The following are the proposed changes to fees.

	<u>Current Fee</u>	<u>New Fee</u>
Mattresses	\$15	\$30
Upholstered Chair	\$15	\$20
Upholstered Sofa	\$15	\$25
Metal/ton	\$40	\$60
TVs (up to 20”)	\$10	\$15
Furnace	\$10	\$20
Commercial MSW/ton	\$125	\$240

DPW Director Tom Daly stated that there will be no changes in fees for the dump stickers. He then explained the need for changes by referring to his letter to the Health Director dated April 4, 2023 in which he noted that, with the exception of Commercial MSW items, the proposed pricing is either on the lower end or in line with Orleans’ neighboring towns. (Comparisons were specified in an attachment to his letter and was provided in the attached Board packet.) Regarding Commercial MSW, the current rate is drastically low and the rate increase reflects various factors, including

increased hauling costs, wear and tear on town vehicles and trailers, spreading out annual budgeted surplus to go towards future capital, and future staff time.

Mr. Daly stated that the proposed tax subsidy is 37%, and that with Board approval of fees, this will appear in the Town Warrant.

There being no public comments or further discussion, Mr. Hartung closed the hearing.

On a motion by Mr. McGrath and seconded by Mr. Hartung, in the matter of the proposed Amendments for the Use of the Orleans Solid Waste Facility Regulations, the BOH voted to approve the recommendations from the DPW Director that are presented to us in the Municipal Fee Comparisons document dated April 4, 2023, with those in red as the recommended prices that have been discussed one-by-one in this meeting, to be effective upon the date of publication. There being no further discussion, the roll call vote was 4-0-1, with Mr. Chapman recusing.

Agenda Item 2 - Public and Press.

No one was present representing public or press.

Agenda Item 3 –Variance Request – 8 Standish Road.

John O'Reilly of JM O'Reilly Associates, representing owners Samuel and Rose Marie Kearing, was present to discuss the proposed septic system at 8 Standish Road. He was seeking approval to use a sieve analysis and also requesting variances from Title 5 and Orleans subsurface sewage disposal regulation (OSSDRs). Regarding the approval to use a sieve analysis, 310 CMR 15.405(1)(H)(1)(i) states that

“A sieve analysis may be performed in accordance with Department guidance if a percolation test in accordance with 310 CMR 15.104 and 15.105 cannot be performed as determined by the Approving Authority.”

The safety concerns voiced limit the ability to perform a perc test in accordance with Title 5 requirements in section 15.104 and 105. The variances requested are all for setbacks due to the size of the lot. The following setback requests are reflective of both Title 5 and the OSSDRs:

- SAS to property line – 5 feet provided, 5 foot variance is requested;
- SAS to foundation – 8 feet is provided, a 2 foot variance is requested;
- Septic tank to property line – 5 feet provided, a 5 foot variance is requested;
- Septic tank to a foundation – 8 feet provided, 2 foot variance is requested;
- Pump chamber to a property line – 5 feet provided, 5 foot variance is requested;
- Pump chamber to foundation – 8 feet provided, 2 foot variance requested.

The Standard of Review is as follows:

- 1) *Variances to the provisions of 310 CMR 15.000 and the Orleans Board of Health Regulations for Subsurface Sewage Disposal shall be granted only when in the opinion of the Orleans Board of Health:*

a) The person requesting a variance has established that a level of environmental protection which is at least equivalent to that provided under 310 CMR 15.000 and these regulations can be achieved without strict application of the provisions from which the variance is being sought.

b) The person requesting the variance has established that the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the intent of these regulations.

In response to Board questions, Mr. O'Reilly stated that the footprint is same as what is there currently, and that the use of poly barriers has been proposed, and the dwelling is served by town water.

There were no abutters present.

On a motion by Mr. McGrath and seconded by Mr. Chapman, in the matter of 8 Standish Road in Orleans, the variance request for local upgrade approval, in the matter of 310 CMR 15.104 "Percolation Test," finding that there are safety concerns, the Board of Health voted to allow for a sieve test to be supervised and approved by the Health Agent under a subsequent section of 310 CMR. Further, under 310 CMR 15.211 in the Town of Orleans Regulation 185-17.3(d) "Setbacks," the Soil Absorption System (SAS) is not 10 feet from the property line, and 5 feet is provided, the Board voted to approve a 5-foot variance. The SAS system is not 10 feet from the crawl space and 8 feet is provided, with a 2 foot variance requested, the Board voted to approve a 2 foot variance requested noting that there is a poly barrier to be around the perimeter of the excavation. The septic tank is not 10 feet from the property line and 5 feet is provided, and the Board voted to approve a 5 foot variance. The septic tank is not 10 feet from the crawl space foundation and 8 feet is provided, and the Board voted to approve a 2 foot variance as requested. The pump chamber distance is not 10 feet from the property line and 5 feet is provided, and the Board voted to approve a 5 foot variance as requested. The pump chamber distance is not 10 feet from the crawl space and 8 feet is provided, and the Board voted to approve a 2 foot variance as requested. There being no further discussion, the roll call vote was 5-0-0.

Agenda Item 4 – Variance Request – 190 Barley Neck Road.

Stephanie Sequin (Ryder and Wilcox) and Elaine Flanagan (owner of 190 Barley Neck Road) appeared to request an after-the-fact variance to Title 5 to allow a sewage ejector which has already been installed and discharges to a 1,000 gallon septic tank.

310 CMR 15.229(1)(a) states in part that "the septic tank shall have a minimum effective volume of 1,500 gallons."

As stated in Ms. Sequin's introduction, in the 1990s a number of changes were made in the previously unfinished basement. Based on the floor plans when the house was built, as of 2009 when the Nutrient Management Regulations went into effect, 190 Barley Neck Road had 5 legally created bedrooms. Based on the as built floor plans submitted with the variance application, there are potentially seven bedrooms (and ten or potentially eleven or twelve total rooms). The lot size at 190 Barley Neck Rd is ~ 50,529 SF, restricting the dwelling to no more 5 bedrooms.

310 CMR 15.002 is the definition section of Title 5. Under the definition of a bedroom it states *Where the total number of rooms for single family dwellings exceeds eight, not including bathrooms, hallways, unfinished cellars and unheated storage areas, the number of bedrooms presumed shall be calculated by dividing the total number of rooms by two then rounding down to the next lowest whole number. The applicant may design a system using design flows for a smaller number of bedrooms than are presumed in this definition by granting to the Approving Authority a deed restriction limiting the number of bedrooms to the smaller number.*

The Standard of Review for variances from Title 5 is as follows:

Variances shall be granted only when, in the opinion of the Approving Authority:

- (a) The person requesting a variance has established that enforcement of the provision of 310 CMR 15.000 from which a variance is sought would be manifestly unjust, considering all the relevant facts and circumstances of the individual case; and*
- (b) The person requesting a variance has established that a level of environmental protection that is at least equivalent to that provided under 310 CMR 15.000 can be achieved without strict application of the provision of 310 CMR 15.000 from which a variance is sought.*

Ms. Fitch stated that in the past, the Board has conditioned such variance approvals with a deed restriction. Since the Board agreed that the basement at this time does not count as a habitable room, future bedrooms, brining the count to five, would have to be done through the building department, and at that time, when the system is upgraded, it must be designed to accommodate 5 bedrooms. There were no abutters present.

On a motion by Mr. McGrath and seconded by Mr. Hartung, in the matter of 190 Barley Neck Road, the applicant is seeking a local upgrade approval in a variance from 310 CMR 15.2291(a), with existing ejector pump installed some time ago leading to a 1,000 gallon tank where 1,500 gallon minimum is required, the Board voted to approve a variance from 310 CMR 15.2291(a). There being no further discussion, the role call vote was 5-0-0.

On a motion by Mr. McGrath and seconded by Mr. Chapman, in the matter of 190 Barley Neck Road, finding that the house existed in a condition that would be considered 5 bedrooms prior to 2009, the Board voted to request that a deed restriction be placed on the home limiting it to five bedrooms and that deed restriction should note that the entire basement is non-habitable space. There being no further discussion, the role call vote was 5-0-0.

Agenda Item 5 – Hearing Request – 38 Locust Road.

Erin Stratton, 38 Locust Road, was present via ZOOM to request that the Board withdraw or defer its order to connect to the wastewater sewer system. A full septic system was installed in 2014. There were no required variances to Title 5 or the Orleans Subsurface Sewage Disposal Regulations (OSSDR)s. A small portion of the work was performed within the 100-foot buffer zone to a coastal wetland, but it was so miniscule that the proposed work did not require approval from the

Conservation Commission (it was handled administratively, and the Conservation Agent left no notes). There was a flow barrier installed along the north, east and south edges of the leach field to encourage effluent flow in a direction away from the 100-foot buffer zone. When test holes were performed groundwater was observed five feet below the bottom of the system.

Orleans' Sewer Connection Regulation states that "any petitioner seeking a hearing with the Board must also file with the Board of Water and Sewer Commissioners (BWSC), which shall submit a written recommendation on that specific property to the BOH."

Ms. Fitch spoke with the applicant before the meeting to alert her of the written recommendation from BWSC requirement and that this is the first request of this kind from a homeowner of a single-family home. Because of all that, she stated that this is an opportunity for the BOH to establish a smooth process for hearings of this nature and set protocol for future hearing requests. (The BWSC next meeting is Wednesday, May 17.)

The Board acknowledged that this application was received within the appropriate time boundaries and that the system was installed in 2014 with some thought to the environmental considerations, i.e. it was well constructed, the flow is away from the pond, and it is reasonable to expect a 20 year life span. However, as Cedar Pond is one of the most nitrogen rich areas in Orleans, the Board encouraged Ms. Stratton to start the process of exploring costs and ramifications of future hookup to the sewer system, the first step being obtaining an engineering plan.

There were no abutters present.

On a motion by Mr. McGrath and seconded by Mr. Chapman, in the matter of 38 Locust Road, the Board of Health voted to continue this matter until such time as the Board has received a written response from the BWSC, recognizing that the Board is supposed to continue to a date and time certain but cannot do so since it is not known when the Board will receive a response from the other Body. When this matter is taken up again, the Board would also like to see a quote from a local vendor. There being no further discussion, the roll call vote was 5-0-0.

Agenda Item 6 – Hearing Request – 18 West Road.

Paul Ahman, representing the 41 condos at 18 West Road, made a presentation regarding their current 2004-approved Innovative/Alternative (I/A) septic system. (Each owner received sewer connection order letters.) Having spent a large amount of money on a system which has reduced nitrogen, in lieu of hooking up to sewers at present, the condo association would like to continue to be able to operate with the current I/A system as long as it is functioning properly.

The Board pointed out that as a community-wide project, other owners in town would have to pay more to compensate for allowing condo to opt out. Additionally, as a community effort, the property represents a percentage of the flow into the system. Provisions currently state that a system less than ten years old can continue to operate until its tenth anniversary, but this system is over 14 years old.

The Board of Water and Sewer Commissioners must give written comments in order for the BOH to reach a decision. Guidance and a joint discussion between the two bodies would be necessary to

properly advise going forward, as any decision would be precedent setting. In the future, applications such as these should be first be acknowledged quickly by BOH, with owners then directed to submit a hearing request to the BWSC. The Board agreed that the applications should appear either as a meeting agenda item or acknowledged in the Heath Agent's report, but that, for efficiency's sake, the discussion and actual vote would not happen until written comments are received from the BWSC.

Four other condo owners were present – Mike Gradone, Lisa Allen, Pam Patrick, and property manager Bill Davis. No abutters to the condos were present.

On a motion by Mr. McGrath and seconded by Mr. Hartung, in the matter of 18 West Road, the Board of Health voted to continue this application until such time as the Board has received a written comment from the BWSC, that it should be continued to a time and date certain as it is not able to do so in this case. With no further discussion, the roll call vote was 5-0-0.

Agenda Item 7 – Discussion of Orleans Wastewater Management Phase 3.

BOH and Board of Water and Sewer Commissioners (BWSC) member John Smith updated the Board with a Power Point presentation on the BWSC's work since 2011. (The complete report can be found on the BWSC website.)

A six-phase plan was developed for meeting the state's regulations to reduce the nitrogen (and in some cases phosphorus) that is being released into six watersheds – Pleasant Bay, Namskaket Marsh, Atlantic Ocean, Rock Harbor, Little Namskaket Marsh, and Nauset Harbor. Phase I, just completed, includes Rock Harbor, Little Namskaket Marsh, and Nauset Harbor. Meeting House Pond area will be included in Phase II if funding is approved at the next town meeting, and would be completed by 2025. Phase III would include Lonnie's Pond, Crystal Lake and Pilgrim Lake and would be completed in 2028. Mr. Smith noted that three areas (Atlantic Ocean, Little Namskaket Marsh and Namskaket Marsh) are not considered to be nitrogen sensitive since the areas are either low density (marshes) or able to flush out on its own (Atlantic). Possible future phases might include Eldridge Parkway, Tonset Road, and Rock Harbor, with other areas being studied. Other nitrogen removal systems to consider include aquaculture (i.e. oyster beds) and permeable barriers.

Agenda Item 8 – Approve Minutes – February 16, 2023 and March 2, 2023.

On a motion by Mr. McGrath and seconded by Mr. Hartung, in the matter of the minutes of February 16, 2023, the Board of Health voted to approve. There being no further discussion, the roll call vote was 5-0-0.

Regarding the minutes of March 2, 2023, Mr. McGrath noted for the record that he was not present at the meeting so he reviewed them and presented them as a matter of form only and expected colleagues to comment.

On a motion by Mr. Kanaga and seconded by Mr. Hartung, in the matter of the minutes of March 2, 2023, the Board of Health voted to approve. There being no further discussion, the roll call vote was 3-0-2, with Mr. McGrath and Mr. Chapman recusing.

Agenda Item 9 - Administrative.

- Waiver Request – 75 Gosnold Road.

The HD received a waiver request for a Title 5 inspection at 75 Gosnold Road. The distribution box could not be exposed because it is located under a granite stairway. The inspector used a water test and camera to determine if the d box is in good working condition and it is his opinion that the distribution box is functioning as it should.

On a motion by Mr. McGrath and seconded by Mr. Hartung, in the matter of 75 Gosnold Road, the Board of Health voted to approve the waiver request. There being no further discussion, the roll call vote was 5-0-0.

- Motel Permit Application Approval – Seashore Park Inn.
 - Seashore Park Inn is under new ownership and is applying for a motel permit. No overall changes to the building have been proposed – there are still 63 rooms. The local board of health is responsible for licensing motels under M.G.L. c. 140, s. 32B.
 - The Health Department is working with the applicant to perform a comprehensive review of the business proposal and existing circumstances, so Ms. Fitch asked that upon approval, the BOH approve the permit application pending any administrative or inspectional requirements.

On a motion by Mr. Hartung and seconded by Mr. McGrath, in the matter of Seashore Park Inn, the Board of Health voted to approve the motel permit application pending any administrative or inspectional requirements. There being no further discussion, the roll call vote was 5-0-0.

- Swimming Pool Permit Application Approval – Seashore Park Inn.
 - Seashore Park Inn has applied for a pool permit. This is an existing pool that does require some upgrades, so Ms. Fitch asked that upon approval, the BOH approve the permit pending any administrative requirements and a passing final inspection.

On a motion by Mr. Hartung and seconded by Mr. McGrath, in the matter of Seashore Park Inn, the Board of Health voted to approve the swimming pool permit pending any administrative requirements and a passing final inspection. There being no further discussion, the roll call vote was 5-0-0.

- Temporary Food Permit Application Approvals.
 - Nauset Public Schools – Orleans Firebirds Concessions.
 - Nauset Public Schools has applied for the temporary food permit(s) to run concessions at the Orleans Firebirds Games June through August. There will be at least 22 game events, plus any possible championship games.

- They propose to cook the food inside the Nauset Middle School Kitchen while also utilizing an outdoor grill to heat pre-cooked products. The proposed menu includes items such as hamburgers, hot dogs, sausages, pizza and nachos.
- The kitchen is licensed as a Food Establishment; there are handwashing sinks and restroom facilities very close by and sanitizing products available for surfaces and equipment.
- This is the same request as previous years. The Health Department has no issues with the proposal.

On a motion by Mr. Hartung and seconded by Mr. McGrath, in the matter of Nauset Public School temporary food permit for the Orleans Firebirds food concession stand from June to August 2023, the Board of Health voted to approve. There being no further discussion, the roll call vote was 5-0-0.

- U.S. Coast Guard Auxiliary – Boat Safety Week
 - The US Coast Guard Auxiliary has applied for temporary food permits for their Boat Safety Week events on May 20 and May 21. They propose to offer hot dogs to attendees. They will cook them outdoors on a small grill that has a cover. The food product will be kept on ice in a cooler. Food handlers will use disposable gloves and serve food on single use paper goods. Hand sanitizer will be available and handwashing facilities will be available in the Shaw’s Supermarket.
 - The Health Department has no issues with the proposal, though we recommend the approval be conditioned on an official agreement between the applicant and Shaw’s to use their handwashing and restroom facilities.

On a motion by Mr. McGrath and seconded by Mr. Hartung, in the matter of the U.S. Coast Guard Auxiliary temporary food permit, the Board of Health voted to approve with the condition that Shaw’s and the temporary food permit holder (USCG Auxiliary) have an official agreement to allow the use of restrooms and hand washing facilities. There being no further discussion, the roll call vote was 5-0-0.

Agenda Item 10 – Health Agent’s Report.

- Planning Board Memo RE: Orleans Comprehensive Plan – Goals and Policies, Land Use and Growth Management.
- Planning Board Memo RE: Orleans Comprehensive Plan – Goals and Policies, Health and Human Services.

The Planning Board is reviewing the Orleans Comprehensive Plan, and would like to hear from the BOH about if it feels the goals identified in the documents regarding Land Use and also Health and Human Services continue to be relevant. The memo regarding Land Use was in the meeting packet, and the Health and Human Services will be included in the packet for the next meeting. This will be a discussion on the next agenda, and the Director of Planning will be available during our next meeting to answer questions.

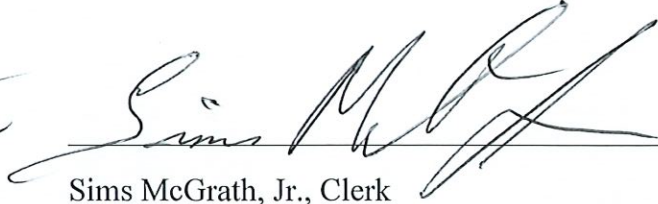
Agenda Item 11- Adjournment.

On a motion by Mr. Hartung and seconded by Mr. Kanaga the Board of Health voted to adjourn this meeting at 3:52 p.m. Without further discussion, the roll call vote was 5-0-0.

Respectfully submitted,



Valerie Petersen, Board Secretary



Sims McGrath, Jr., Clerk

November 2, 2023

Date Approved/Accepted

