

VIRGINIA:

BEFORE THE STATE HEALTH DEPARTMENT
SEWAGE HANDLING AND DISPOSAL
APPEAL REVIEW BOARD

IN RE: MR. JOHN POLLARD

Mr. Pollard appeals the Health Commissioner's denial of his application for a variance in connection with an onsite sewage disposal permit for a two bedroom house on his property at lot 17, Quail Cove Subdivision, Lancaster County.

Mr. Pollard purchased the property in 1974. At that time he subdivided it and sold off four lots. At present, three adjacent lots have been developed; Mr. Pollard testifies that there have been "no problems" with the septic systems on these lots, or another nearby lot, two of which were developed in about 1975.

The Health Department has denied two prior applications for sewage systems on this lot. On March 9, 1992, Mr. Pollard, through his consultant, Mr. Grabb, applied for a third permit, on another area of the lot. This last application contemplates a shallow-placed, low pressure distribution system with a sand filter. Mr. Grabb reports the depth to water table as 26-32" and the depth to impervious strata as 28-48". The *Sewage Handling and Disposal Regulations* (Bd. of Health, 1989) (the "Regulations"), require a trench depth of 18", Regulations § 4.30.C.1, and a minimum separation between the trench bottom and impervious strata of 12", § 4.30.A.2. Using Mr. Grabb's estimated percolation rate of 45 min/inch, the minimum separation distance between the trench bottom and the seasonal water table also must be 12". Regulations Table 4.5. Accordingly, the depth of soil on this lot to seasonal water table or impervious strata must be at least 30".

In light of the insufficient depth of soil to the seasonal water table and impervious strata, Mr. Pollard's application includes an application for a variance, to allow the use of 12" trenches. Regulations § 2.7.

The State Health Commissioner has published guidelines for the Department staff. These guidelines allow variances on a routine basis in certain situations. Department Exhibits 21 and 22. As to the present case, the current guidelines allow installation of trenches at 12" instead of 18", provided the sewage is treated by a sand filter, flow is restricted to 750 gallons per day, and the other provisions of the Regulations are met. With this reduction, using Mr. Grabb's data, the Pollard lot meets the guidelines (minimum depth = 12" + 12"

= 24"; actual depth to water = 26-32" and actual depth to impervious strata = 28-42").

The Department, however, disputes Mr. Grabb's conclusion as to depth to water table. The Department relies primarily upon Mr. Peacock, a VPI soil scientist on contract to the Department. Mr. Peacock found (as did Mr. Grabb) gray mottles at about 24". These conclusively establish the presence of a seasonal water table at this depth. Regulations § 3.5.A.2. However, Mr. Peacock concludes that the perched water table is considerably more shallow. Mr. Peacock relies upon the presence of prominent mottles as shallow as 18" to 19", with faint mottles above, and the restrictive horizons at 24", with massive impervious strata at 28" to 32". Mr. Peacock concludes that these conditions produce slow internal permeability and that, in the flat landscape of the Pollard lot, the shallow mottles indicate a seasonal water table. Mr. Peacock states that these conditions would lead to water mounding over the drainfield, with subsurface lateral movement of partially treated sewage and a lack of proper, aerobic treatment.

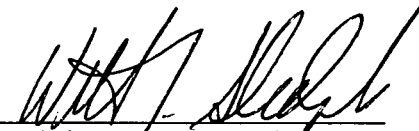
Thus, this Board is faced with a battle of the experts. The Board elects to rely upon Mr. Peacock. The Regulations state that the mottles in these soils "may indicate slow internal drainage and may indicate a seasonal water table." Regulations § 3.5.A.1. Mr. Peacock explains how the structure of these soils will lead to ponding, with very little vertical water movement and with horizontal movement restricted as the depth increases. In these circumstances, it is reasonable to conclude that the mottles indicate a seasonal water table. Mr. Grabb offers no explanation why the mottles do *not* indicate a seasonal water table. He relies primarily upon the absence of water in the auger holes during the several visits made to this site. The Board is aware that the occasional presence or absence of water in auger holes is not sufficient evidence to allow a conclusion as to the presence or absence of a water table; only a prolonged water table study can conclusively provide that information. In the absence of such a study, the Board must rely upon the soils data and conclude that the Pollard site has a seasonal water table as shallow as 18" or less.

Mr. Pollard also relies upon the absence of failure of the neighboring systems. The Department's records show that all but one of these systems was installed under the earlier regulations; the one system under the present regulations was in soils that allowed the Department to conclude that there was no water table problem. Of course, Mr. Pollard's lack of knowledge of failure by the nearby systems does not mean that the systems have not failed. If the neighboring soils are the same as those on the Pollard lot, a failure most likely would result in pollution of the groundwater, and that would not necessarily be apparent from the surface.

Thus, the Board concludes that the system proposed by Mr. Pollard probably would fail; upon failing, the system would place partially treated sewage into the groundwater, where it might reach the surface. The benefit to the public of avoiding this contamination is the absence of the potential spread of disease from groundwater or surface water contamination. The hardship to Mr. Pollard is that he will be unable to install a drainfield on just one of at least five of the lots he subdivided. It is not clear that Mr. Pollard could not locate a drainfield elsewhere on the lot or, under an easement, upon a neighboring lot. There is no evidence to show the value of this lot without the variance to Mr. Pollard, whether for building, for purposes other than building a residence, or for sale to a neighboring homeowner. In any event, this lot has some value, whether or not it can support a drainfield. The value of the lot will not be increased by having a failed drainfield upon it.

Accordingly, the Board concludes that the benefit to the public outweighs the hardship to Mr. Pollard. Moreover, Mr. Pollard asks to install a system that probably will fail, exposing the public to an unreasonable health risk. *See* Exhibit 23. Accordingly, the Commissioner's denial of Mr. Pollard's request for a variance will be AFFIRMED.

Mr. Pollard may initiate a judicial appeal of this decision by filing a notice of appeal with the Board's Secretary, Ms. Constance Talbert, Office of Environmental Health Services, 1500 East Main Street, Richmond, Virginia 23219, within thirty-three days of the date of mailing of this order to him. Other requirements for perfecting an appeal are set out in Part 2A of the Rules of the Supreme Court of Virginia and in the Administrative Process Act.



William F. Sledjeski,
Chairman

Dated: June ¹⁹⁹⁵ 16, ~~1992~~ w/s

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