

VIRGINIA:

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

In Re: Florence Bailey

ORDER

Ms. Bailey appeals the denial of an application¹ for a permit² for an onsite sewage disposal system on her property at Lot 2, Shands Estates in Sussex County.

The Department denied the Permit on April 15, 1999, following an informal conference. The Board heard the appeal in Richmond on July 14, 1999.

The parties agree that the soils at the rear of the lot are not suitable for a drainfield. At the front of the lot, however, the Department identified at least a small area of suitable soils. Ms. Bailey claims that this area is sufficient for the installation of a drainfield.

¹ The application was filed by Brenda H. Drew, the Sussex County Housing Coordinator, on behalf of Chandra Hines, who appears to be a prospective purchaser.

² Code § 32.1-164.B.1 authorizes the Board of Health to adopt regulations to include "[a] requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system . . ." Section 2.12 of the Board's *Sewage Handling and Disposal Regulations* (the *Regulations* now are codified at 12 VAC 5-610-10 *et seq.*; § 2.12 is codified at 12 VAC 5-610-240) imposes that requirement. Section 1.4 of the *Regulations*, 12 VAC 5-610-40, authorizes the Commissioner to delegate his authority under the *Regulations* (except for variances and orders) to the Department and appoints the Department as the primary agent of the Commissioner for the purpose of administering the regulations. Pursuant to that authority, the Commissioner has delegated the authority to issue and deny permits; he has not delegated the authority to issue variances. Denials of permits and variances may be appealed to this Board for the final administrative decision pursuant to Code §§ 32.1-164.1 and 32.1-166.6.

The Department's expert, Mr. Conta, testified that the soils on the lot generally are shallow to gray mottles, *i.e.*, a seasonal water table.³ Near the center-front of the lot, Conta's auger hole 7 showed suitable soils, with a depth to the water table of 38".⁴ Toward the right front of the lot Conta #8 shows a seasonal water table at 28". At the left-front of the lot, Conta's hole #1 showed clayey soils with indications of seasonal wetness, but with a depth to the gray mottles of 40".⁵ Unfortunately the area of adequate soils around hole 7 is cut off by a driveway between holes 1 and 7 where the topsoil has been removed and replaced with gravel.⁶

Under the Regulations, a three-bedroom house requires an absorption area of 1032 square feet.⁷ With the maximum trench width of 3' and the minimum center-to-center separation distance of 9' and a maximum length of 100',⁸ this translates to a four-trench drainfield with a footprint area of 39' x 86'. There is nowhere near that much suitable soil area on this site.

³ 12 VAC 5-610-490. Assuming a percolation rate of 45 minutes per inch (which is generous for these soils), the minimum setback from the 18" trench bottom is 12", *i.e.*, the minimum depth to the seasonal water table is something above 30". 12 VAC 5-610-950.

⁴ Department Exhibit 10.

⁵ Because of the clayey character and periodic wetness, and the location at the foot of a slope, however; Mr. Conta called the soils "marginal" for a drainfield. Department Exhibit 10 at 2.

⁶ The trenches must be in undisturbed soil. 12 VAC 5-610-950.

⁷ Assuming a percolation rate of 45 min/inch, which is generous for these soils. 12 VAC 5-610-490 and -950.

⁸ *Id.*

Ms. Bailey suggests that the Board perform a linear interpolation to determine the distance the suitable soils run back from holes 1 & 7. The Board has no information to show that the depth to seasonal water table varies linearly between these auger holes. Moreover, Ms. Bailey had the burden to show the existence of a suitable area with at least five auger holes.⁹ She has provided nothing but speculation to contradict Mr. Conta's testimony that the site does not have a sufficient area of suitable soils.

Lot 2 is part of a four-lot subdivision¹⁰ The plat shows no drainfield area on the lot; indeed, the plat carries a note that "Lot 2 does not have an approved sewage disposal site at this time." Ms. Bailey makes much of the convoluted history of the property. Whatever that that history may show, Ms. Bailey does not claim grandfathering or any other situation that would avoid the unsuitability of the soils under the current Regulations. The Board must deal with the existing lot that plainly is not suitable for a conventional onsite disposal system.


Accordingly the Board will sustain the Department's denial of the application.

If Ms. Bailey wishes to appeal this decision, she may initiate an appeal by filing a notice of appeal with the Board's Secretary, Ms. Susan Sherertz, Division of Environmental Health Services, 1500 East Main Street, Richmond, Virginia

⁹ 12 VAC 5-610-480.

¹⁰ See the plat attached to Mr. Conta's report, Department Exhibit 10.

23219 within thirty-three days of the date of mailing of this order to her. 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.


Felton T. Sessoms
Acting Chairman

Dated: July 19, 1999

\\SIMBA\USERS\Govern\Jrb\D10\Bailey.Doc
Printed July 15, 1999 at 10:00 AM