

VIRGINIA:

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

In Re: C. Monroe Janney

FINAL ORDER

Mr. Janney appeals the State Health Commissioner's denial of an onsite sewage disposal permit for two adjacent lots, known as TM 55A-17 & -32B in Shenandoah County. The front lot, 1.031 acres adjacent to Rt. 779, also is known as Lot 17, Section 3, Strawberry Hill Subdivision. The back lot, five acres adjacent to the back side of the front lot, also is known as Section 7. The Department's slides show a beautiful view of the mountains from this property.

Mr. Janney subdivided the lots along the road in 1977. The subdivision plat containing lot 17 was endorsed by William H. Hatfield, J.D., the Director of the Lord Fairfax Health District with the statement: "Lots are subject to approval or disapproval on an individual lot basis as to the location of the water supply and the installation of the sewage disposal system." The Department agrees that Lot 17 is grandfathered under § 1.7.A of the Sewage Handling and Disposal Regulations (Board of Health, 1989) (the "Regulations").

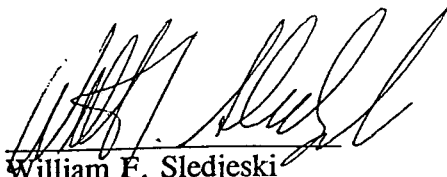
The Department's evidence, set out fully in the Department's proposed findings, shows clearly that neither lot meets either the '71 regulations or the current Regulations. See § 1.7.A.1.a (previously approved subdivision lots to be evaluated under the 1971 regulations to assess soils, siting and sizing of system; current Regulations apply if percolation rate exceeds 60 min/in).

Aside from his own informal percolation rates, Mr. Janney does not directly question these data. Instead, he relies on over forty years' of experience in irrigated agriculture to conclude that the soils on the site can receive very large liquid loadings without runoff. From this, Mr. Janney asserts that the soils similarly can receive the loadings from a drainfield without runoff.

Mr. Janney's wealth of experience in irrigated agriculture does not aid the Board in making its decision under the Regulations. Mr. Cobb, a soil scientist, makes the telling distinction: the issue is not runoff, it is treatment of the sewage effluent. In particular, the crucial issue here is whether a drainfield would achieve aerobic treatment of effluent under the drainfield trenches. Mr. Cobb's un rebutted, convincing testimony shows clearly that it would not.

The fragipan and the underlying shrink-swell clays create a nearly impenetrable barrier to vertical movement of water; this barrier doubtless is the reason for the shallow seasonal water table. As Mr. Cobb testified, neither lot meets either the '71 regulations or the current Regulations. Accordingly, the Board must sustain the Health Commissioner's denial of the permit.

Mr. Janney may initiate a judicial appeal of this decision by filing a notice of appeal with the Board's Secretary, Ms. Constance Talbert, Division of Environmental Health Services, 1500 East Main Street, Richmond, Virginia 23219 within 33 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: September 26, 1994

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