

**BOARD OF SEPTIC AND WELL APPEALS**  
**AGENDA**  
**January 26, 2024**  
**2:00 pm**  
**GOVERNMENT CENTER, 101 CHALMERS COURT**  
**(A/B meeting room)**

1. Call to order – Clerk, Board of Septic & Well Appeals

2. Election of Officers

- ❖ Chair
- ❖ Vice Chair

3. Approval of Agenda

4. Approval of Meeting Minutes: July 7, 2023

5. **Septic Variance – Public Hearing**

**Steve and Joy Hudson are requesting a variance of 528 square feet to install a septic drip field less than 1,200 square feet required by Code of Clarke County Chapter 143-11-D-3 (Septic). The property is located at 122 River Park Ln., Tax Map #32A-1-10, Millwood Election District, zoned Forestal Open-Space Conservation (FOC). BSA-24-01**

6. Adjournment



# Clarke County Board of Septic and Well Appeals

**DRAFT MINUTES** – Meeting Minutes

Friday, July 7, 2023 – 2:00 PM

Berryville/Clarke County Government Center – A/B Meeting Room

ATTENDANCE:			
Jenny Irwin	✓	Matthew Bass (Vice-Chair)	✓
George L. Ohrstrom, II (Chair)	✓		

**STAFF PRESENT:** Brandon Stidham (Director of Planning), Lorien Lemmon (Conservation Planner/GIS Coordinator)

**OTHER PRESENT:** Stephen Shendow (Applicant)

**Call to order:** By Mr. Stidham at 2:09PM

### Election of Officers

The Board voted 3-0-0 to appoint George Ohrstrom, II to serve as Chairman for 2023.

Motion to appoint George Ohrstrom, II to serve as Chair of Board of Septic Well Appeals for 2023:	
Jenny Irwin	✓ (moved)
George L. Ohrstrom, II	✓
Matthew Bass	✓ (seconded)

The Board voted 3-0-0 to appoint Matthew Bass to serve as Vice Chair for 2023.

Motion to appoint Matthew Bass to serve as Vice Chair of Board of Septic Well Appeals for 2023:	
Jenny Irwin	✓ (moved)
George L. Ohrstrom, II	✓ (seconded)
Matthew Bass	✓

### Approval of Agenda

The Board voted 3-0-0 to approve the July 7, 2023 agenda as presented by Staff.

Motion to approve the July 7, 2023 agenda as presented by Staff:	
Jenny Irwin	✓ (moved)
George L. Ohrstrom, II	✓
Matthew Bass	✓ (seconded)

### Approval of Meeting Minutes

The Commission voted 3-0-0 to approve the March 2, 2022 meeting minutes as presented by Staff.

<b>Motion to approve the March 2, 2022 Meeting Minutes as presented by Staff.</b>	
Jenny Irwin	✓ (seconded)
George L. Ohrstrom, II	✓
Matthew Bass	✓ (moved)

### Well Variance – Public Hearing

**Stephen Shendow is requesting a 40 foot variance to the Clarke County Well Ordinance so as to site an attached screened in porch closer than 50 feet from an existing well on the property identified as Tax Map #9-2-2 located at 130 Lewisville Road, Berryville, VA, Russell Election District, zoned Agricultural Open-Space Conservation (AOC).**

Ms. Lemmon explained this request. She stated that the applicant is requesting a 40 foot variance to the Clarke County Well Ordinance so as to site a screened in porch closer than the 50 feet from an existing well. She referenced Section 184-15 Appeals & Variances of the Clarke County Well Ordinance which states that in order to be eligible for a variance, the applicant must meet at least one of five criteria. The applicant is eligible for a variance based on the criteria which states that the private water supply system serves or is planned to serve: *An existing single-family dwelling or structure serving an existing business.*

Ms. Lemmon further explained that the location of the proposed screened in porch would be in compliance with the Commonwealth of Virginia Private Well Regulations requirement of a minimum of 10 feet distance between the well and the porch, so long as the structure is not chemically treated for termites. She also noted that while the applicant initially requested a 41.5 foot variance, staff found the actual variance distance to be 40 feet during the site visit.

Ms. Lemmon noted that the house, which was built in 1982, is 17 feet from the well and that most of the current rooftop runoff flows towards the well. The proposed porch would divert approximately 75% of that runoff further way from the well through a downspout on the other side of the porch. She also commented that due to the architecture of the house and location of the trees, no other site was appropriate for the proposed porch. She recommended approval of the variance request so long as the applicant signed an affidavit stating that the screened in porch would not be chemically treated for termites.

After discussion with Staff and the Board, Chair Ohrstrom opened the public hearing. There being no public comments, Chair Ohrstrom called for a motion.

The Board voted 3-0-0 to approve the Well Ordinance Variance BSA-23-01 as requested.

<b>Motion to approve BSA-23-01, Stephen Shendow (Well Variance Application):</b>	
Jenny Irwin	✓ (moved)
George L. Ohrstrom, II	✓
Matthew Bass	✓ (seconded)

**Discussion:**  
**Review of §184-15.C.2 Hardship language**

Ms. Lemmon inquired about the standard of review described in Section 184-15.C.2 of the Clarke County Well Ordinance which states: “Variances shall be approved to alleviate a clearly demonstrable hardship approaching confiscation involving existing single-family dwellings or structures serving an existing business as distinguished from a special privilege or self-imposed (elective) convenience or option sought by the applicant.” The “reaching confiscation” language suggests that a landowner would not be able to utilize their property unless a variance is granted. She stated that while researching variance requests similar to BSA-23-01, she noted that historically this standard of review has not been applied and that requests have been approved as long as the applicant agreed not to spray for termites on the proposed structures. Ms. Lemmon asked the Board if, moving forward, the review standard should be applied as written or if staff should pursue a text amendment.

Mr. Stidham further explained that much of the variance language included in the Clarke County Well Ordinance was borrowed from the Clarke County Zoning and Subdivision Ordinances variance language. He continued to explain that case law on zoning variances has evolved to a point where if the landowner has some ability to use their property, then a variance would not be approved. He noted that if the present language was applied as written to the Well Ordinance that approval of variance requests by the Board would be low. He mentioned that staff could create a different review criteria that would include the evaluation of the impact of a potential contamination source to the well and whether the applicant is doing something to improve the water quality of their well.

Chair Ohrstrom voiced his support and asked about the text amendment process. Mr. Stidham answered that staff would draft new language for the hardship section of the Well Ordinance and present it to the Board of Supervisors. Ms. Irwin agreed that a review standard that allows the Board to look at each application individually and evaluate any potential reduction of contamination or other benefits would be more appropriate. The Board agreed by consensus that staff pursue a text amendment to the hardship language of the Clarke County Well Ordinance.

**Adjournment:** The July 7<sup>th</sup> 2023 Board of Septic Well Appeals Meeting adjourned by consensus at 2:20PM.

<b>Motion to adjourn the July 7, 2023 Board of Septic and Well Appeals meeting at 2:20PM:</b>	
Jenny Irwin	✓ (moved)
George L. Ohrstrom, II	✓
Matthew Bass	✓ (seconded)

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George L. Ohrstrom, II (Chair)

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Lorien Lemmon (Clerk)

**SEPTIC ORDINANCE VARIANCE REQUEST (BSA-24-01)**  
**Steve and Joy Hudson**  
**January 26<sup>th</sup>, 2024 Board of Septic and Well Appeals Meeting**  
**STAFF REPORT Department of Planning**

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The purpose of this staff report is to provide information to the Board of Septic and Well Appeals members to assist them in reviewing this proposed variance request. It may be useful to members of the general public interested in this proposed request.

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**Case Summary**

**Applicant(s):**

Steve and Joy Hudson (Owners)

**Location:**

- Subject property is located at 122 River Park Ln, Tax Map #32A-1-10
- Millwood Election District
- Zoned: Forestal Open-Space Conservation

**Request:**

Steve and Joy Hudson are requesting a variance of 528 square feet to install a septic drip field less than 1,200 square feet required by Code of Clarke County Chapter 143-11-D-3 (Septic).

**Eligibility for Variance:**

The Clarke County Septic Ordinance Section 143-15 Appeals & Variances states that in order to be eligible for a variance, the applicant must meet at least one of five criteria. The applicant is eligible for a variance based on the criteria, which states that the system serves or is planned to serve:

- *An existing single-family dwelling or structure serving an existing business.*
- *The variance is requested so as to provide for septic systems or water supply systems replacing existing septic systems or water supply systems that are more consistent with the regulations of this article. An existing single-family dwelling or structure serving an existing business must be located on the property with the existing septic system or water supply system.*

**Compliance with State Regulations:**

The proposed absorption area of 672 sq. ft. complies with the required absorption area design as stated in Table 5.5 of the Commonwealth of Virginia Sewage Handling and Disposal Regulations 12VAC5-610-950.

**Staff Discussion/Analysis:**

The Clarke County Septic Ordinance, Chapter 143 Clarke County Code, specifically, Section 143-11-D-3 states “*Minimum Size. For onsite sewage treatment systems using trench dispersal, the size of the soil absorption area based on the square footage of the trench bottoms shall consist of a minimum of 600 square feet. Drip disposal systems or any systems installed shallower than 6” shall have a minimum square footage of 1200 sq. ft*”

The existing house, which was built in 1960, is currently served by an unapproved cesspool. When the owners decided to sell the home in August 2023, the septic system did not pass the

home inspection. A septic drip disposal field of 672 sq. ft. with a reserve of 586 sq. ft. was proposed to replace the old system. The proposed disposal field is 528 sq. ft. smaller than what is permitted by the County Ordinance.

According to the licensed Onsite Soil Evaluator, Robert Charnley, there are no other onsite sewage systems suitable for the property and the proposed alternative system is more consistent with the Ordinance than the existing cesspool. Due to the size of the lot (13,849 sq. ft. or ~1/3 acre) the size of the proposed septic drip field and 100% reserve area is the maximum area possible in order to accommodate the house, well, and building setbacks.

The minimum size requirement of absorption fields for drip systems was incorporated into the Clarke County Septic Ordinance, Chapter 143 Clarke County Code, during the past update of the Ordinance in 2021. During this review it was noted that problems arise with alternative systems, such as drip disposal systems, when pre-treatment components of the system fail and untreated or poorly treated effluent are discharged into an undersized absorption field. The minimum size requirement for drip systems in the Ordinance was based on the recommendation from the Virginia Department of Health (VDH) in order to correspond with the size requirements of neighboring localities and to provide a margin of safety from overuse of these systems. Due to the specific soil types encountered in Clarke, particularly karst, regulations more stringent than those of the Commonwealth were recommended in order to protect the groundwater resources.

However, due to the limited size of the parcel in which the existing single-family dwelling is situated, there is not enough area to comply with the minimum size requirement stated in the Ordinance for the only onsite sewage system deemed appropriate for the site. Section 143-15-C-2 states *“Variances shall be approved to alleviate a clearly demonstrable hardship approaching confiscation involving existing single-family dwellings or structure serving an existing business as distinguished from a special privilege or self-imposed (elective) convenience or option sought by they applicant.”* While the applicant’s unapproved cesspool is still functioning, if it were to fail, the VDH would likely approve the proposed system to replace it. Replacement of the cesspool now will remedy this unapproved system before it fails and will help the applicants to sell their property.

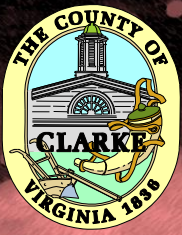
The applicant is improving the protection of groundwater resources by updating the septic system from an unapproved cesspool to an alternative drip system. Although it does not meet the size requirements of the County Ordinance, it does meet the size requirements for the state regulations.

Please review the applicant’s request and accompanying paperwork as well as the sketch showing the proposed drip absorption field and reserve.

Staff has reviewed the applicant’s submittal and has no outstanding concerns.

**Recommendation:**

Approval of Steve and Joy Hudson’s request for a variance of 528 square feet to the Clarke County Septic Ordinance §143-11-D-3 so as to install a drip disposal system and 100% reserve on the property identified as Tax Map #32A-1-10. It is to be understood that this variance in size for the primary area be reflected in the size of the 100% reserve area.



# BOARD OF SEPTIC AND WELL APPEALS

## VARIANCE & APPEALS

### General Information

Date:	12/22/2023	Tax Map #:	32A-1-10
Zoning District:		Lot Size:	.75
Overlay District (if applicable):			
Site Address:	122 River Park Ln		
Property Owner's Name:	Steve Hudson		
Property Owner's Mailing Address:	357 N. Pickens Bridge Rd #6, Piney Flats, TN 37686		
Applicant's Name: <i>(if different than applicant)</i>	Steve Hudson		
Applicant's Mailing Address: <i>(if different than applicant)</i>	357 N Pickens Bridge Rd Unit 6, Piney Flats,, TN 37686		
Phone:	540-487-7410	Email:	stev HUDSON125@gmail.com

### Application Type

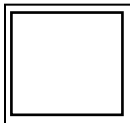
Select the type of application that is being submitted. A separate application is required if filing multiple types.

Variance



*If Variance is selected, proceed to the following page.*

Appeal



*If Appeal is selected, proceed to the following page.*



## Reason for Variance or Appeal

Provide a detailed explanation of the request. If requesting a variance, explain how your request meets the criteria of Chapter 143, Section 15C-1a. If appealing and order, requirement, decision, or determination, provide the information required by Chapter 143, Section 15B-2.

See attached email communications.

I have reread the 'Notice of Denial'. It appears that the Health Department (VDH) may be considering the sizing of the proposed drip field and reserve as proposed a 'potential threat to public health and the environment', because it doesn't meet the County guidance of 1,200 s.f. minimum.

For clarification, please see our basis for sizing of the proposed drip field and reserve.

The following is from the VDH SHDR (12VAC5-610-955):

C. Drip dispersal systems shall comply with the following minimum soil absorption area

## Exhibits

List the exhibits or other supporting documents included with your application. This should include the required components of an application, as listed under Clarke County Code, Chapter 143, Section 143-15C-3 (variances), or Section 143-15B-2 (appeals).

Previously submitted.



By checking here, and signing below, I attest that all Clarke County delinquent taxes and charges for the subject property are paid and up-to-date and that all information provided on this application is accurate.

*[Handwritten Signature]*

01/04/2024

Signature of Applicant (if different from owner)

Date

Signature of Owner

Date

Office Use Only

DATE RECEIVED: \_\_\_\_\_

FEE PAID: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

GIS ACCOUNT #: \_\_\_\_\_



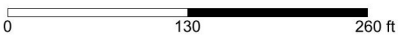




- Public
- Parcels
- Parcels With Orthos
- Clarke County Boundary
- Major Roads
  - Interstate
  - US Highway
  - State Highway
- Surrounding Counties Op
- Surrounding Counties Non



The data shown on this site are provided for informational and planning purposes only. Clarke County and its consultants are not responsible for the misuse or misrepresentation of the data.







P.O. Box 949 • Berryville, VA 22611  
540.533.8830 • [info@BattletownEC.com](mailto:info@BattletownEC.com)

Board of Well and Septic Appeals  
101 Chalmers Court  
Berryville, VA 22611

RE: Variance Application – 122 River Park Lane, Bluemont, VA 20135 (Clarke Co. TM # 32A-1-10)

Dear Board Member,

Thank you for taking the time to meet with us for the field review. We would like to present the following as our understand of facts, to date:

- A denial letter (attached) was issued by the Virginia Department of Health (VDH) December on 19, 2023 for an Alternative Onsite Sewage System (AOSS) Construction Permit Application. The application was for an existing 1-bedroom dwelling.
- The application was submitted with Construction Plans and Specifications for AOSS by Battletown Environmental Consulting, LLC (licensed Onsite Soil Evaluator (OSE)) and Potesta & Associates (licensed Professional Engineer (PE)). The Plans and Specifications were developed by the OSE and PE with the intent of meeting both State regulations and standard engineering practices. Licensed OSE's and/or PE's are the only individuals qualified to design AOSS in Virginia.
- The denial letter appeared to be issued by VDH based on Clarke County Septic Ordinance (CCSO) requirements; specifically, the minimum drip dispersal field sizing of 1,200 square feet. The peak design flow for the proposed AOSS was 150-gallon per day. In this particular case, the County's minimum sizing guidance is grossly exaggerated and inconsistent with both State regulations and standard engineering practice for drip dispersal fields receiving treated effluent in the soils proposed. A drip dispersal field meeting State requirements with 100-percent reserve area was proposed.
- The denial letter was issued in lieu of the necessary permits to install and subsequently operate an AOSS on the property. The denial letter is actively prohibiting the owner from installing and operating the AOSS as proposed, since the owner cannot legally have the system installed without a permit.
- Page 1 of the CCSO (attached) appears to defer to State standards specifically when (i) sewers or sewerage disposal facilities are not available and (ii) the AOSS has been approved by VDH for use in the particular circumstances and conditions in which it is to be operating.
- VA Code 15.2-1200 (attached) appears to only allow a County to adopt measures that are not inconsistent with the general laws of the Commonwealth.
- It appears VA Code 15.2-2157(C) (attached) was referenced on Page 1 of the CCSO. VA Code 15.2-2157(C) states “When sewers or sewerage disposal facilities are not available, a locality

shall not prohibit the use of alternative onsite sewage systems that have been approved by the Virginia Department of Health for use in the particular circumstances and conditions in which the proposed system is to be operated.

- The above referenced CCSO and VA Code excerpts were provided to County Staff and VDH by email and offered at our in-person meeting. County Staff and/or VDH have maintained to date that a variance to the CCSO, or a lengthy appeal / lawsuit, would be required in order for VDH to issue the permit.
- County Staff and/or VDH have referenced VA Code 32.1-34 (attached) as justification for their decisions. VA Code 32.1-34 appears to state that no local ordinance shall be less stringent than any applicable State law or VDH regulation. This would appear to be but one criteria that an Ordinance must meet. VA Code 32.1-34 does not in any way appear to enable the County to administer or enforce Ordinance requirements that are inconsistent with general laws of the Commonwealth.
- An official advisory opinion from the Virginia Office of the Attorney General (attached) dated December 3, 2010 was provided to County Staff and VDH by email. The opinion appears to validate that a locality cannot require an owner to obtain a special exemption to a local zoning ordinance if the conditions set forth in VA Code 15.2-2157(C) exist.
- At our in-person meeting with County Staff and VDH, County Staff confirmed sewers or sewage disposal facilities are not available to the subject property.
- At our in-person meeting with County Staff and VDH, VDH Staff confirmed the Construction Plans and Specifications for the AOSS were of a type approved by the Virginia Department of Health for use in the particular circumstances and conditions in which the proposed system was proposed to be operating.

It is still unclear why County Staff and/or VDH are still requiring a Variance to the CCSO in order to issue the necessary permits. The owners would very much like to expedite this process. On behalf of the owner, we are asking for further review on this matter by the next level of authority prior to the public hearing.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. B. Charnley III".

Robert B. Charnley III  
OSE # 001456  
Battletown Environmental Consulting, LLC.

**Denial of AOSS application 32.1 163.6**

December 19, 2023

**NOTICE OF DENIAL ALTERNATIVE ONSITE SEWAGE SYSTEM CONSTRUCTION PERMIT APPLICATION**

Steven & Gladys J. Hudson  
122 River Park Lane  
Bluemont, VA 20135

Site Address: 122 River Park Lane, Bluemont, VA 20135  
Tax Map #: 32A-1-10 HDID#: 043-23-196 EHD ID #: 043-STS-37189

RE: Alternative Onsite Sewage System (AOSS) Construction Permit Application (043-STS-37189)

Dear Steven & Gladys J. Hudson;

This Notice of Denial for your Alternative Onsite Sewage System (AOSS) Permit Application (Notice) is to inform you Clarke County Health Department reviewed your AOSS construction application submitted on 12/08/2023 as required by Code of Virginia § 32.1-163.6 (Professional engineering of onsite treatment works). Carter Neiswander, Environmental Health Specialist, and Kevin Yost, Environmental Health Supervisor reviewed your submission and for the specific reasons below, Clarke County Health Department **is denying your AOSS construction permit application** based upon observations of alleged violations of the Code of Clarke County. Observations forming the basis of this Notice include:

Observations and Factual Understanding

1. The proposed primary drip field area is 672 square feet. Clarke County requires a minimum of 1200 square feet for drip dispersal areas.
2. The proposed reserve drip field area is 536 square feet which is less than 50% of the required 1200 square feet. Clarke County requires a 100% reserve area.

These observations constitute potential threats to public health and the environment should you construct the AOSS as proposed. As a result, this Notice serves to remind you of your responsibility to submit for approval an AOSS construction permit application compliant with the applicable law of the State Board of Health (Board), pursuant to authority granted by Code Virginia Title 32.1 et seq. and the Code of Clarke County. Applicable law contains the following provisions:

Applicable Law (in part)

Code of Virginia § 32.1-34. Scope of local health ordinances and regulations. No county, city or town ordinance or regulation shall be less stringent in the protection of the public health than any applicable state law or any applicable regulations of the Board.

Code of Virginia § 32.1-24. Applicability of Administrative Process Act.

The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall govern the procedures for rendering all case decisions, as defined in § 2.2-4001, and issuing all orders and regulations under the provisions of this Code administered by the Board, the Commissioner or the Department unless exempt from the Administrative Process Act.

12VAC5-610-170. Enforcement of Regulations.

All sewage handling and disposal facilities shall be constructed and operated in compliance with the requirements as set forth in this chapter. The commissioner may enforce this chapter through any means lawfully available.

A. Notice. Subject to the exceptions indicated below whenever the commissioner or the district or local health department has reason to believe a violation of any of these regulations has occurred or is occurring, the alleged violator shall be notified. Such notice shall be made in writing, shall be delivered personally or sent by certified mail, shall cite the regulation or regulations that are allegedly being violated, shall state the facts which form the basis for believing the violation has occurred

or is occurring, shall include a request for a specific action by the recipient by a specified time and shall state the penalties associated with such violations (See § 32.1-27 of the Code of Virginia).

12VAC5-613-40. Relationship to other regulations.

A. This chapter is supplemental to 12VAC5-610 (Sewage Handling and Disposal Regulations).

B. All procedures pertaining to enforcement, minimum requirements for filing applications, and processing of applications, including appeals and case decisions contained in the Sewage Handling and Disposal Regulations shall apply to the permitting of AOSSs under this chapter.

C. In any case where there is a conflict between this chapter and the Sewage Handling and Disposal Regulations, this chapter shall control.

Code of Clarke County Chapter 143-11.D.3. Minimum Size.

For onsite sewage treatment systems using trench dispersal, the size of the soil absorption area based on the square footage of the trench bottoms shall consist of a minimum of 600 square feet. Drip disposal systems or any systems installed shallower than 6" shall have a minimum square footage of 1200 sq. ft.

Code of Clarke County Chapter 143-11.D.4 Reserve Area.

An onsite sewage system reserve area with a capacity at least equal to that of the primary area (100%) shall be provided in accordance with the provisions of this article regardless of parcel recordation date. If existing lots must be merged to create a satisfactory building lot, than a 100% reserve area is required.

#### Recommendations

Clarke County Health Department recommends you take the following steps to address the alleged regulatory non-compliance presented by your AOSS construction permit application:

1. Locate a sewage disposal system that meets the minimum sizing requirements outlined in the Clarke County Septic Ordinance.

2. Or, apply for a variance through the Clarke County Board of Well and Septic Appeals

3. Alternatively, request a refund of your application fee should you decline to appeal this AOSS application Notice within 12 months of receipt. (Contact this office at a number below for additional guidance regarding fee refunds)

#### Rights of the named party

This Notice sets forth above Clarke County Health Department's observations, alleged violations, and provides recommended application considerations. You have the right to an Informal Fact-finding Conference (IFFC) as provided by the Code of Virginia § 2.2-4019, 32.1-163.6, and the Regulations at 12VAC5-610-230 (Appeal), with the district Health Director presiding. During the IFFC you may contest the denial of your submitted AOSS construction permit application or submit additional facts or evidence to be considered by the Department. To schedule an IFFC, please submit a written request for an IFFC to Tara Blackley, District Health Director, at 107 N Kent St, Suite 201, Winchester, Virginia 22601 within 30 days of receipt of this Notice as provided in 12 VAC5-610-230 and outlined in GMP #1997-01 Time Limits to Appeal Case Decisions. Please specify whether you request the Health Director or the Engineering Design Review Panel (EDRP) to function as presiding officer during the IFFC pursuant to Code of Virginia § 32.1-163.6. E. Should you schedule an IFFC and fail to appear absent good cause, the presiding officer may issue an adverse case decision as contemplated by Code of Virginia § 2.2-4020.2 (Default.). If you need a reasonable accommodation for a disability, a translator, or a sign language interpreter to participate in the IFFC, please contact Carter Neiswander, Environmental Health Specialist at (540) 277-3570, or via email at [carter.neiswander@vdh.virginia.gov](mailto:carter.neiswander@vdh.virginia.gov) within 15 days of the scheduled hearing date. Please contact Kevin Yost, Environmental Health Supervisor at (540) 547-1321, or via email at [kevin.yost@vdh.virginia.gov](mailto:kevin.yost@vdh.virginia.gov) should you have questions regarding this Notice, election of administrative remedies to challenge the intended denial, or application fee refunds.

Sincerely,

  
Carter Neiswander, EHS

Cc: Robert B. Charnley, AOSE  
Kevin J. Knechtel, PE

## Chapter 143 Septic Systems

[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Chapter 71 Building Construction  
Chapter 161 Subdivision Of Land  
Chapter 180 Water And Wastewater, Article I Sewage Disposal  
Chapter 184 Wells  
Chapter 188 Zoning

### Code of Virginia References

§ 15.2-1200 General Powers of Counties  
§ 15.2-2157. Septic tanks and sewage disposal when sewers not available  
§ 32.1-163 et seq. - Sewage disposal

#### *§ 143-1. Intent; state regulations;*

The intent of this article is to minimize the potential for groundwater contamination resulting from improper siting and construction of onsite sewage systems in Clarke County. Clarke County has Karst topography and fragile hydrogeology and has the potential for depletion and contamination of water sources and the potential for hazards to public health, safety and welfare as a result. To protect the health, safety and welfare of the general public, the standards as set forth hereafter in this chapter are established for all onsite sewage systems constructed or installed in the County. Pursuant to these goals, the Board of Supervisors hereby exercises its power, as granted by Sections 15.2-1200 and 15.2-2157 of the Code of Virginia (1950, as amended), to protect groundwater by regulating onsite sewage systems.

To the extent that any provision of this Chapter 143 conflicts with any other provision of State or local law, the more stringent provision shall apply; provided, however that, to the extent that any provision of Chapter 143 as applied to an alternative onsite sewage systems (AOSS) is deemed to be additional to or more stringent than the requirements and standards for alternative onsite sewage systems of the State Board of Health, then this chapter shall apply to the greatest extent possible and the said State requirements and standards shall apply if (i) sewers or sewerage disposal facilities are not available in the area of the subject property, and (ii) the alternative onsite sewage system used on the subject site has been approved by the State Board of Health for use in the particular circumstances and conditions in which it is to be operating.

To that end, standards and procedures for soil evaluation, system siting and system design and installation are addressed herein, followed by conditions for obtaining a variance to the provisions of this article and the penalties associated with the violation of this article. Definitions of technical terms contained herein are addressed in § 143-2.

This Ordinance shall be administered and enforced by the Zoning Administrator and the Health Department who shall have all necessary authority on behalf of the governing body to administer and enforce the Ordinance, including the ordering in writing of the remedying of any condition found in violation, and the bringing of legal action to compel compliance with the Ordinance or provide for the imposition of the penalties hereinafter provided.



Code of Virginia  
Title 15.2. Counties, Cities and Towns  
Chapter 12. General Powers and Procedures of Counties

**§ 15.2-1200. General powers of counties.**

Any county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants **which are not inconsistent with the general laws of the Commonwealth.** Such power shall include, but shall not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals and the adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county.

Code 1950, § 15-8; 1954, c. 529; 1956, cc. 218, 664; 1956, Ex. Sess., c. 40; 1958, c. 279; 1960, c. 606; 1962, c. 623, § 15.1-510; 1997, c. 587.

Code of Virginia

Title 15.2. Counties, Cities and Towns

Subtitle II. Powers of Local Government

Chapter 21. Franchises; Sale and Lease of Certain Municipal Public Property; Public Utilities

Article 7. Miscellaneous Services, Etc., in Certain Localities

## § 15.2-2157. Onsite sewage systems when sewers not available; civil penalties

A. Any locality may require the installation, maintenance and operation of, regulate and inspect onsite sewage systems or other means of disposing of sewage when sewers or sewerage disposal facilities are not available; without liability to the owner thereof, may prevent the maintenance and operation of onsite sewage systems or such other means of disposing of sewage when they contribute or are likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious and dangerous diseases; and may regulate and inspect the disposal of human excreta.

B. Any locality that (i) has a record of the location of alternative and conventional onsite sewage systems and alternative discharging systems; (ii) has notified owners of their maintenance responsibility for such systems; and (iii) has a method to identify property transfer may adopt an ordinance establishing a uniform schedule of civil penalties for violations of specified provisions for the operation and maintenance of alternative and conventional onsite sewage systems and alternative discharging systems, as defined in § 32.1-163, that are not abated or remedied within 30 days after receipt of notice of violation from the local health director or his designee. No civil action authorized under this section shall proceed while a criminal action is pending and no criminal action shall proceed if the violation has been abated or remedied through civil enforcement.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$100 for the initial summons and not more than \$150 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties exceeding a total of \$3,000. If the violation is not abated after the imposition of the maximum fine, the locality may pursue other remedies as provided by law. Designation of a particular ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, and dangerous diseases.

The local health director or his designee may issue a civil summons ticket as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the

same right of appeal as provided for by law. In any trial for a scheduled violation, the locality shall have the burden of proving by a preponderance of the evidence the liability of the alleged violator. An admission of liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding.

This section shall be not interpreted to allow the imposition of civil penalties for activities related to land development.

C. When sewers or sewerage disposal facilities are not available, a locality shall not prohibit the use of alternative onsite sewage systems that have been approved by the Virginia Department of Health for use in the particular circumstances and conditions in which the proposed system is to be operating.

D. A locality shall not require maintenance standards and requirements for alternative onsite sewage systems that exceed those allowed under or established by the State Board of Health pursuant to § 32.1-164.

E. The State Health Commissioner shall require, as a precondition to the issuance of an alternative onsite sewage system permit pursuant to § 32.1-164 to serve a residential structure, that the property owner record an instrument identifying by reference the applicable maintenance regulations for each component of the system in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the onsite sewage system is to be located, which shall be transferred with the title to the property upon the sale or transfer of the land that is the subject of the permit.

Code 1950, § 15-77.20; 1958, c. 328; 1962, c. 623, § 15.1-856; 1997, c. 587; 2005, c. 814; 2007, c. 924; 2009, cc. 786, 846; 2016, c. 721.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia  
Title 32.1. Health  
Chapter 1. Administration Generally

**§ 32.1-34. Scope of local health ordinances and regulations.**

No county, city or town ordinance or regulation shall be less stringent in the protection of the public health than any applicable state law or any applicable regulations of the Board.

1979, c. 711.



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II  
Attorney General

December 3, 2010

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7-1-1

The Honorable Stephen H. Martin  
Member, Senate of Virginia  
P.O. Box 700  
Richmond, Virginia 23832

Dear Senator Martin:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether § 15.2-2157(C) prevents a Virginia locality from requiring a developer to obtain a special exception to the local zoning ordinance in order to construct a privately-owned alternative onsite sewage system under the circumstances contemplated by that subsection.

## Response

It is my opinion that a Virginia locality cannot require an owner to obtain a special exception to a local zoning ordinance in order to install an alternative onsite sewage system if the conditions set forth in § 15.2-2157(C) exist, namely that (i) there is no sewer or sewerage disposal facility available and (ii) the alternative onsite sewage system has been approved by the Virginia Department of Health for use in the particular circumstances and conditions in which the proposed system is to be operating.

## Background

Alternative onsite sewage systems, as well as conventional systems, are regulated by the Virginia Department of Health. Section 32.1-163 defines a conventional onsite sewage system as “a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.” Conversely, § 32.1-163 defines an alternative onsite sewage system as, “a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.”<sup>1</sup> Alternative systems are often utilized due to soils being unsuitable for conventional septic systems, or if there are too many conventional septic systems in one area, or the systems are too close to groundwater or surface waters.<sup>2</sup>

Alternative systems use different treatment mediums such as sand, peat or plastic instead of soil to promote wastewater treatment. Some systems utilize wetlands, lagoons, aerators or disinfection devices

<sup>1</sup> VA. CODE ANN. § 32.1-163 (2009).

<sup>2</sup> See ENVIRONMENTAL PROTECTION AGENCY, A HOMEOWNER’S GUIDE TO SEPTIC SYSTEMS 3 (2002, rev. 2006), available at [http://www.epa.gov/owm/septic/pubs/homeowner\\_guide\\_long.pdf](http://www.epa.gov/owm/septic/pubs/homeowner_guide_long.pdf).

for treatment. Float switches, pumps and other electrical or mechanical components are also used in alternative systems.<sup>3</sup> According to the Virginia Department of Health, there is an increasing need for alternative septic systems as increasing residential growth pushes homeowners to find solutions for marginal soils and geology.<sup>4</sup> The exponential growth in the value of buildable land is also prompting the increasing reliance on alternative systems.<sup>5</sup>

Your letter notes that a locality has adopted an ordinance that requires a developer of a subdivision to obtain a special exception to the local zoning ordinance in order to construct a privately-owned alternative sewage system under certain conditions. You question whether a locality may impose such a requirement.

### Applicable Law and Discussion

Pursuant to § 15.2-2157, when sewers or sewerage disposal facilities are not available, a locality has the general authority to regulate, inspect, and require the installation and maintenance of onsite sewage systems in order to protect public health.<sup>6</sup> A county or town also has the general authority to deny applications for onsite sewage systems when the locality has adopted a master plan for sewerage. Section 15.2-2128 provides:

Notwithstanding any other provision of *general law* relating to the approval of sewage systems, the governing body of any county or town which has adopted a master plan for a sewage system is authorized to deny an application for a sewage system if such denial appears to it to be in the best interest of the inhabitants of the county or town.<sup>7</sup>

In 2009, the General Assembly amended § 15.2-2157 to add subsection (C) specifically to bar localities from prohibiting “the use of alternative onsite sewage systems that have been approved by the Virginia Department of Health” in areas where sewers or sewerage disposal facilities are not available.<sup>8</sup> The amendments to § 15.2-2157 further provided in subsection (D) that localities “shall not require

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> See E.L. HAMM & ASSOCS., INC., VDH RE-ENGINEERING INITIATIVE, ONSITE SEWAGE SYSTEM PROGRAM 1 (2006), available at [http://www.vdh.virginia.gov/EnvironmentalHealth/Onsite/newssofinterest/documents/VDH%20Reengineering%20Initiative\\_final\\_5.06.pdf](http://www.vdh.virginia.gov/EnvironmentalHealth/Onsite/newssofinterest/documents/VDH%20Reengineering%20Initiative_final_5.06.pdf)

<sup>5</sup> *Id.*

<sup>6</sup> VA. CODE ANN. § 15.2-2157(A) (Supp. 2010) (“Any locality may require the installation, maintenance and operation of, regulate and inspect onsite sewage systems or other means of disposing of sewage when sewers or sewerage disposal facilities are not available; without liability to the owner thereof, may prevent the maintenance and operation of onsite sewage systems or such other means of disposing of sewage when they contribute or are likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious and dangerous diseases; and may regulate and inspect the disposal of human excreta”). See also § 15.2-2126 (2008) (requiring notice for the establishment or extension of sewer systems to serve three or more connections) and § 15.2-2127 (2008) (authorizing localities to disapprove sewage systems if the locality finds for certain reasons that the sewage system is not capable of serving the proposed number of connections).

<sup>7</sup> Section 15.2-2128 (2008) (emphasis added).

<sup>8</sup> 2009 Va. Acts chs. 786, 846. VA. CODE ANN. § 15.2-2157(C)-(D).

maintenance standards and requirements for alternative onsite sewage systems that exceed those allowed under or established by the State Board of Health pursuant to § 32.1-164.”<sup>9</sup>

Construing §§ 15.2-2157 and 15.2-2128 together, the use of alternative onsite sewage systems cannot be prohibited where sewers or sewerage disposal facilities are not available regardless of whether a master sewage plan has been adopted. “[W]hen one statute speaks to a subject in a *general* way and another deals with a part of the same subject in a more *specific* manner, the two should be harmonized, if possible, and where they conflict, the latter prevails.”<sup>10</sup>

In your opinion request, you specifically refer to an ordinance enacted by a locality requiring a “special exception”<sup>11</sup> in order to construct a privately owned alternative septic system. Because the granting of a special exception is discretionary,<sup>12</sup> you note that it is possible for the locality to deny a developer’s application for an alternative onsite sewage system despite the system fulfilling the requirements of § 15.2-2157(C). Pursuant to that section, the special exception requirement may be valid only if a public sewer is available and offered to the individual seeking to install the alternative onsite sewage system. The locality retains the general authority pursuant to § 15.2-2157(A) and § 15.2-2128 to regulate, inspect, and deny applications for onsite sewage systems where a public sewer or sewerage facility is available; but § 15.2-2157(C) clearly states that when “sewers or sewerage disposal systems are not available, a locality shall not prohibit the use of alternative onsite sewage systems....” To require a special exception application for an alternative onsite sewer system that meets the conditions set forth in § 15.2-2157(C) effectively would give the local governing body the option to prohibit the system, a result not permitted by that subsection.

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<sup>9</sup> *Id.* The State Board of Health enacted emergency regulations, effective April 7, 2010, for alternative onsite sewage systems pursuant to the enactment language of the 2009 amendments to § 32.1-163.6. 2009 Va. Acts ch. 220. See 2009 Op. Va. Att’y Gen. 3 (concluding that adoption by Board of Health of emergency regulations will trigger applicability of § 15.2-2157(C)-(D) upon the effective date of such regulations). The regulations prescribe certain requirements for alternative onsite sewage systems depending upon the designer of the system. See 12 VA. ADMIN. CODE §§ 5-613-40 through 5-613-110. Requirements imposed by localities that are more stringent than those listed in the regulations are prohibited by § 15.2-2157(D).

<sup>10</sup> *Thomas v. Commonwealth*, 244 Va. 1, 22-23, 419 S.E.2d 606, 618 (1992) (quoting *Va. Nat’l Bank v. Harris*, 220 Va. 336, 340, 257 S.E.2d 867, 870 (1979)) (emphasis added). See also *Phipps v. Liddle*, 267 Va. 344, 346, 593 S.E.2d 193, 195 (2004) (“If possible, we must harmonize apparently conflicting statutes to give effect to both.”); *Kirkpatrick v. Bd. of Supvrs.*, 146 Va. 113, 125, 136 S.E. 186, 190 (1926) (“[W]here two statutes are in apparent conflict they should be construed, if reasonably possible, so as to allow both to stand and to give force and effect to each.”); *Ainslie v. Inman*, 265 Va. 347, 353, 577 S.E.2d. 246, 249 (2003) (“[W]hen a given controversy involves a number of related statutes, they should be read and construed together in order to give full meaning, force, and effect to each.”); *Ragan v. Woodcroft Village Apts.*, 255 Va. 322, 325, 497 S.E.2d 740, 742 (1998) (“We accord each statute, insofar as possible, a meaning that does not conflict with any other statute.”).

<sup>11</sup> The term “special exception” refers to “the delegated power of the state to set aside certain categories of uses which are to be permitted only after being submitted to governmental scrutiny in each case, in order to insure compliance with standards designed to protect neighboring properties and the public.” *Bd. of Supvrs. v. Southland Corp.*, 224 Va. 514, 521, 297 S.E.2d 718, 721-22 (1982).

<sup>12</sup> “Whether a legislative body has reserved unto itself the power to grant or deny special exceptions or use permits, or has delegated the power to a Board of Zoning Appeals, [the Supreme Court of Virginia has] consistently held the exercise of that power to be a legislative, rather than administrative act.” *Id.*, 224 Va. at 522, 297 S.E.2d at 722. Such a legislative act “involves ... balancing ... the consequences of private conduct against the interests of public welfare, health and safety[.]” *Id.*

Further, § 15.2-2157(D) prohibits a locality from establishing maintenance standards and requirements for alternative onsite systems that exceed those established by the Virginia Department of Health.<sup>13</sup> Therefore, if the “special exception” places standards or requirements on alternative systems that are more restrictive than those prescribed by the Virginia Department of Health, the ordinance would exceed the scope of the authority granted to localities pursuant to § 15.2-2157(D). The Commonwealth follows the Dillon Rule, which “provides that ‘municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.’”<sup>14</sup> Thus, “[w]hen a local ordinance exceeds the scope of this authority, the ordinance is invalid.”<sup>15</sup>

### Conclusion

Accordingly, it is my opinion that a Virginia locality cannot require an owner to obtain a special exception to a local zoning ordinance in order to install an alternative onsite sewage system if the conditions set forth in § 15.2-2157(C) exist, namely that (i) there is no sewer or sewerage disposal facility available and (ii) the alternative onsite sewage system has been approved by the Virginia Department of Health for use in the particular circumstances and conditions in which the proposed system is to be operating.<sup>16</sup>

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General

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<sup>13</sup> Section 15.2-2157(D), unlike subsection (C), does not contain the language, “[w]hen sewers or sewerage disposal facilities are not available.” Therefore, it is presumed that the General Assembly intended for subsection (D) to apply whether or not a sewer or sewerage disposal system were available. *See Logan v. City Council*, 275 Va. 483, 492, 659 S.E.2d 296, 301 (2008) (“We determine the General Assembly’s intent from the words employed in the statutes.”); *see also City of Richmond v. Confre Club of Richmond*, 239 Va. 77, 80, 387 S.E.2d 471, 473 (1990) (“Legislative intent is determined from the plain meaning of the words used.”).

<sup>14</sup> *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 417, 690 S.E.2d 84, 88 (2010) (quoting *Bd. of Zoning Appeals v. Bd. of Supvrs.*, 276 Va. 550, 553-54, 666 S.E.2d 315, 317 (2008)); *accord Bd. of Supvrs. v. Countryside Inv. Co.*, 258 Va. 497, 502-05, 522 S.E.2d 610, 612-14 (1999); *City of Chesapeake v. Gardner Enters., Inc.*, 253 Va. 243, 246, 482 S.E.2d 812, 814 (1997).

<sup>15</sup> *City of Chesapeake*, 253 Va. at 246, 482 S.E.2d at 814; *see also Bd. of Supvrs. v. Reed’s Landing Corp.*, 250 Va. 397, 400, 463 S.E.2d 668, 670 (1995) (“If there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body.”).

<sup>16</sup> A Virginia locality still may require that plans for an alternative onsite sewage system be submitted as part of its site plan review process to ensure that the necessary technical requirements have been met. *See* § 15.2-2286(A)(8) (Supp. 2010). Any such review, however, must not impose requirements that exceed those established for such systems in regulations of the State Board of Health. *See* § 15.2-2157(D). Nor may the effect of any such review be to prohibit an alternative onsite sewage system when the conditions set forth in § 15.2-2157(C) exist.



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**Denial of AOSS application 32.1 163.6**

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December 19, 2023

**NOTICE OF DENIAL ALTERNATIVE ONSITE SEWAGE SYSTEM CONSTRUCTION PERMIT APPLICATION**

Steven & Gladys J. Hudson  
122 River Park Lane  
Bluemont, VA 20135

Site Address: 122 River Park Lane, Bluemont, VA 20135  
Tax Map #: 32A-1-10 HDID#: 043-23-196 EHD ID #: 043-STS-37189

RE: Alternative Onsite Sewage System (AOSS) Construction Permit Application (043-STS-37189)

Dear Steven & Gladys J. Hudson;

This Notice of Denial for your Alternative Onsite Sewage System (AOSS) Permit Application (Notice) is to inform you Clarke County Health Department reviewed your AOSS construction application submitted on 12/08/2023 as required by Code of Virginia § 32.1-163.6 (Professional engineering of onsite treatment works). Carter Neiswander, Environmental Health Specialist, and Kevin Yost, Environmental Health Supervisor reviewed your submission and for the specific reasons below, Clarke County Health Department **is denying your AOSS construction permit application** based upon observations of alleged violations of the Code of Clarke County. Observations forming the basis of this Notice include:

**Observations and Factual Understanding**

1. The proposed primary drip field area is 672 square feet. Clarke County requires a minimum of 1200 square feet for drip dispersal areas.
2. The proposed reserve drip field area is 536 square feet which is less than 50% of the required 1200 square feet. Clarke County requires a 100% reserve area.

These observations constitute potential threats to public health and the environment should you construct the AOSS as proposed. As a result, this Notice serves to remind you of your responsibility to submit for approval an AOSS construction permit application compliant with the applicable law of the State Board of Health (Board), pursuant to authority granted by Code Virginia Title 32.1 et seq. and the Code of Clarke County. Applicable law contains the following provisions:

**Applicable Law (in part)**

Code of Virginia § 32.1-34. Scope of local health ordinances and regulations. No county, city or town ordinance or regulation shall be less stringent in the protection of the public health than any applicable state law or any applicable regulations of the Board.

**Code of Virginia § 32.1-24. Applicability of Administrative Process Act.**

The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall govern the procedures for rendering all case decisions, as defined in § 2.2-4001, and issuing all orders and regulations under the provisions of this Code administered by the Board, the Commissioner or the Department unless exempt from the Administrative Process Act.

**12VAC5-610-170. Enforcement of Regulations.**

All sewage handling and disposal facilities shall be constructed and operated in compliance with the requirements as set forth in this chapter. The commissioner may enforce this chapter through any means lawfully available.

A. Notice. Subject to the exceptions indicated below whenever the commissioner or the district or local health department has reason to believe a violation of any of these regulations has occurred or is occurring, the alleged violator shall be notified. Such notice shall be made in writing, shall be delivered personally or sent by certified mail, shall cite the regulation or regulations that are allegedly being violated, shall state the facts which form the basis for believing the violation has occurred

or is occurring, shall include a request for a specific action by the recipient by a specified time and shall state the penalties associated with such violations (See § 32.1-27 of the Code of Virginia).

12VAC5-613-40. Relationship to other regulations.

A. This chapter is supplemental to 12VAC5-610 (Sewage Handling and Disposal Regulations).

B. All procedures pertaining to enforcement, minimum requirements for filing applications, and processing of applications, including appeals and case decisions contained in the Sewage Handling and Disposal Regulations shall apply to the permitting of AOSSs under this chapter.

C. In any case where there is a conflict between this chapter and the Sewage Handling and Disposal Regulations, this chapter shall control.

Code of Clarke County Chapter 143-11.D.3. Minimum Size.

For onsite sewage treatment systems using trench dispersal, the size of the soil absorption area based on the square footage of the trench bottoms shall consist of a minimum of 600 square feet. Drip disposal systems or any systems installed shallower than 6" shall have a minimum square footage of 1200 sq. ft.

Code of Clarke County Chapter 143-11.D.4 Reserve Area.

An onsite sewage system reserve area with a capacity at least equal to that of the primary area (100%) shall be provided in accordance with the provisions of this article regardless of parcel recordation date. If existing lots must be merged to create a satisfactory building lot, than a 100% reserve area is required.

Recommendations

Clarke County Health Department recommends you take the following steps to address the alleged regulatory non-compliance presented by your AOSS construction permit application:

1. Locate a sewage disposal system that meets the minimum sizing requirements outlined in the Clarke County Septic Ordinance.
2. Or, apply for a variance through the Clarke County Board of Well and Septic Appeals
3. Alternatively, request a refund of your application fee should you decline to appeal this AOSS application Notice within 12 months of receipt. (Contact this office at a number below for additional guidance regarding fee refunds)

Rights of the named party

This Notice sets forth above Clarke County Health Department's observations, alleged violations, and provides recommended application considerations. You have the right to an Informal Fact-finding Conference (IFFC) as provided by the Code of Virginia § 2.2-4019, 32.1-163.6, and the Regulations at 12VAC5-610-230 (Appeal.), with the district Health Director presiding. During the IFFC you may contest the denial of your submitted AOSS construction permit application or submit additional facts or evidence to be considered by the Department. To schedule an IFFC, please submit a written request for an IFFC to Tara Blackley, District Health Director, at 107 N Kent St, Suite 201, Winchester, Virginia 22601 within 30 days of receipt of this Notice as provided in 12 VAC5-610-230 and outlined in GMP #1997-01 Time Limits to Appeal Case Decisions. Please specify whether you request the Health Director or the Engineering Design Review Panel (EDRP) to function as presiding officer during the IFFC pursuant to Code of Virginia § 32.1-163.6. E. Should you schedule an IFFC and fail to appear absent good cause, the presiding officer may issue an adverse case decision as contemplated by Code of Virginia § 2.2-4020.2 (Default.). If you need a reasonable accommodation for a disability, a translator, or a sign language interpreter to participate in the IFFC, please contact Carter Neiswander, Environmental Health Specialist at (540) 277-3570, or via email at [carter.neiswander@vdh.virginia.gov](mailto:carter.neiswander@vdh.virginia.gov) within 15 days of the scheduled hearing date. Please contact Kevin Yost, Environmental Health Supervisor at (540) 547-1321, or via email at [kevin.yost@vdh.virginia.gov](mailto:kevin.yost@vdh.virginia.gov) should you have questions regarding this Notice, election of administrative remedies to challenge the intended denial, or application fee refunds.

Sincerely,

  
Carter Neiswander, EHS

Cc: Robert B. Charnley, AOSE  
Kevin J. Knechtel, PE