

Steve Sisolak
Governor



Richard Whitley, MS
Director

**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical Officer

MEMORANDUM

DATE: February 19, 2021

TO: Jon Pennell, DVM, Chairperson
State Board of Health

FROM: Lisa Sherych, Secretary
State Board of Health

RE: Case #712, Mr. Richard Ripley

Nevada Administrative Code (NAC) 444.790(1) states:

"A minimum area of 1 acre (43,560 square feet), including public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a well."

STAFF REVIEW

Variance applicant Richard Ripley ("Applicant") submitted a request for variance from the requirements of NAC 444.790(1) on October 29, 2020. The Applicant is requesting approval to remodel his Individual Sewage Disposal System (ISDS) by abandoning an old septic tank, that is buried under the house, and placing a new septic tank in the yard. The lot in question (APN 006-45A-032) is currently developed and occupied, with a total area of 0.52 acres. The replacement tank would be installed approximately 900 feet east from the existing domestic well (Flynn Spring). NAC 444.790(1) requires a minimum of 1 acre for an ISDS on a lot served by a domestic well.

Environmental Health staff of the Division of Public & Behavioral Health used data provided by Nevada Division of Water Resources to calculate that there are currently 0.85 septic systems per acre. A circular area with a perimeter of 0.99 miles (total area: 49.60 acres) around the referenced property has 42 single-family dwellings that are served by private wells and septic systems. DPBH staff have taken a conservative approach by using 1 septic system per acre. The calculated density of septic systems for the area (0.85) is still below the conservative requirement of 1 septic system per acre.

DEGREE OF RISK TO PUBLIC HEALTH

There is little to no risk to the public health in allowing the Applicant to replace his septic tank. The system has been in continuous operation since the 1960s without causing any known public health nuisances.

By replacing the tank, the Applicant will be reducing the risk to the public health by installing a modern two-compartment septic tank in an approved location that can be readily accessed for servicing.

EXCEPTIONAL AND UNDUE HARDSHIP

Strict application of NAC 444.790(1) would require the Applicant to leave the septic tank under the house in an insanitary location, perform renovation work without Division review, or abandon their property.

PUBLIC COMMENT RECEIVED

Notice of the hearing is scheduled to be posted on the Division of Public & Behavioral Health website at <http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/> and at the 4150 Technology Way office in Carson City, NV by February 18, 2021. The Division of Public & Behavioral Health is not aware of any objections to this variance by any local authorities, and no public comments have been received to date.

STAFF RECOMMENDATION

DPBH staff recommend the State Board of Health approve Case #712, Richard Ripley, request for a variance to NAC 444.790(1) without conditions.

PRESENTER

Teresa Hayes, Health Program Manager 3, Environmental Health Section

ATTACHMENTS

1. Well Driller's Log #73492.
2. Proposed Plot Map

BEFORE THE STATE BOARD OF HEALTH

IN THE MATTER OF)

Mr. Richard Ripley)

VARIANCE REQUEST: CASE #712)

The Nevada State Board of Health (“Board”), having considered the application for a variance and all other related documents submitted in support of the application in the above referenced matter, makes the following Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

1. On October 29, 2020, the Division of Public & Behavioral Health (“Division”) received a request for variance from NAC 444.790(1).
2. NAC 444.790(1) states: “A minimum area of 1 acre (43,560 square feet), including public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a well.”
3. Mr. Ripley is requesting to replace a septic tank, that is buried under an expansion of the house, on an existing system. It is believed that the previous owners expanded the house over the top of the septic tank. Mr. Ripley would like to move the septic tank from under the house to in the yard, to be within code. Mr. Ripley’s property (APN 006-45A-032) is in Shanty Town and has 0.520 acres. Shanty Town is a rural community in Elko County, approximately 60 miles South of the city of Elko. All other lots within the immediate area are served by private wells and individual sewage disposal systems.
4. NAC 444.790(1) requires a minimum of 1 acre for a septic system on a lot that is served by a well. The intent is to limit the concentration of septic systems in any given basin. Environmental Health staff of the Division of Public & Behavioral Health used data

provided by Nevada Division of Water Resources to calculate that there are currently 0.85 septic systems per acre. The circular area with a perimeter of 0.99 miles (total area: 49.60 acres) around the referenced property has 42 single-family dwellings that are served by private wells and septic systems. DPBH staff have taken a conservative approach by using 1 septic system per acre. The calculated density of septic systems for the area (0.85) is still below the conservative requirement of 1 septic system per acre.

5. Mr. Ripley's property and 11 others obtain their water from Flynn Spring, located approximately 900 feet west. There are not expected to be any negative impacts to the public health based on the location of the well, relative to the property.

CONCLUSIONS OF LAW

1. This matter is properly before the board pursuant to NRS 439.200 and determination of the matter on the merits is properly within the subject matter jurisdiction of the board.

2. NRS 439.200 provides:

The State Board of Health may grant a variance from the requirements of a regulation if it finds that:

- (a) Strict application of that regulation would result in exceptional and undue hardship to the person requesting the variance; and
- (b) The variance, if granted would not:
 - (1) Cause substantial detriment to the public welfare; or
 - (2) Impair substantially the purpose of the regulation.

3. The board finds that strict application of the regulation would cause an undue hardship. Strict application of NAC 444.790(1) would require the Ripley's to leave the septic tank under the house in an insanitary location, perform renovation work without Division review, or abandon their property.

4. The Board finds that granting this variance would not cause substantial detriment to the public welfare; or impair substantially the purpose of the regulation.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing, therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the variance to NAC 444.8301(5) be GRANTED.

DATED this _____ day of _____, 2021.

Lisa Sherych, Executive Officer
Nevada State Board of Health

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Department of Health & Human Services, Division of Public & Behavioral Health, and that on the _____ day of _____, 2021, I served the foregoing FINDINGS OF FACTS AND DECISION by mailing a copy thereof to:

Mr. Richard Ripley
PO Box 869
Wells, NV 89835

NOTICE OF PUBLIC HEARING
RICHARD RIPLEY IS REQUESTING A VARIANCE, #712, FROM THE NEVADA STATE BOARD OF
HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN that RICHARD RIPLEY has requested a variance from Nevada Administrative Code (NAC) 449.3154. A public hearing will be conducted on **Friday, March 5th, 2020 at 9:00 AM**, by the Nevada State Board of Health to consider this request as follows:

NAC 444.790 Lot size. ([NRS 439.200](#), [444.650](#))

1. A minimum area of 1 acre (43,560 square feet), including public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a well.

2. For a lot that is a part of a tentative map that is approved before January 1, 2000, a minimum area of 1/4 acre (10,890 square feet), including public streets or alleys or other public rights-of-way, lands or any portions thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a community water supply.

3. For a lot that is part of a tentative map that is approved on or after January 1, 2000, a minimum area of 1/2 acre (21,780 square feet), including public streets or alleys or other public rights-of-way, lands or any portions thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a community water supply.

[Bd. of Health, Indiv. Sewage Disposal Systems Reg. Note, eff. 1962; A and numbered as §§ 7.1-7.3, 11-23-72] — (NAC A 10-22-93; R129-98, 3-25-99; R100-07, 10-31-2007)

Persons wishing to comment upon the proposed variance may appear at the scheduled public hearing or may submit written testimony at least five days before the scheduled hearing to:

jfilippi@health.nv.gov
Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Anyone wishing to testify for more than five minutes on the proposed variance must petition the Board of Health at the above address. Petitions shall contain the following: 1) a concise statement of the subject(s) on which the petitioner will present testimony; 2) the estimated time for the petitioner's presentation.

This notice has also been posted at the following locations:
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, 4150 TECHNOLOGY WAY, CARSON CITY, NV
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH WEBSITE:
<http://dpcb.nv.gov/Boards/BOH/Meetings/Meetings/>

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

Division Administration
(NAC 439, 441A, 452, 453A, & 629)

Health Care Quality & Compliance
(NAC 449, 457, 459 & 652)

Child, Family & Community Wellness
(NAC 392, 394, 432A, 439, 441A, & 442)

Health Statistics, Planning,
Epidemiology and Response
(NAC 440, 450B, 452, 453, 453A, & 695C)

Public Health & Clinical Services
(NAC 211, 444, 446, 447, 583, & 585)

Date:

10/29/20

Name of Applicant:

Richard Ripley

Phone:

775 635 2752

Mailing Address:

PO Box 869

City:

Wells

State:

NV

Zip:

89835

We do hereby apply for a variance to
chapter/section

Administrative Code (NAC). (For example: NAC 449.204)

Septic Tank

of the Nevada

Title of section in
question:

Septic Tank

Statement of existing or proposed conditions in violation of the NAC:

The septic tank for this house in Shankytown
NV is under the house. We want to move the
tank from under the house, which is against code
to in the yard. Before we purchased the house and
property, we believe an addition was done to the
back of the house, but the septic tank was not moved.

Updated May 2020

Note: IF you have questions, please call my
Freind Jim Naverant @ 775 752 0992. He is helping
me with this project and knows more about this stuff than
I do. Thank you

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DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
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APPLICATION FOR VARIANCE

Date of initial operation (if existing): 1960 ?

ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
 - (a) There are circumstances or conditions which:
 - (1) Are unique to the applicant;
 - (2) Do not generally affect other persons subject to the regulation;
 - (3) Make compliance with the regulation unduly burdensome; and
 - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
 - (b) Granting the variance:
 - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
 - (2) Will not be detrimental or pose a danger to public health and safety.
2. Whenever an applicant for a variance alleges that he suffers or will suffer economic hardship by complying with the regulation, he must submit evidence demonstrating the costs of his compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supportive of your variance request.

Statement of degree of risk of health

No risk that I can see.
The problem with all of Shanty Town is most
lots are 1/4 acre. The entire town is on septic.
This particular lot and // others are feed water from
a spring which is 1/2 mile away, so well water
pollution is not a problem.

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APPLICATION FOR VARIANCE

Please state in detail the circumstances or conditions which demonstrate that:

1. An exceptional and undue hardship results from a strict application of the Regulation:

We are an elderly couple. I am afraid of the possible health issues having a septic directly under my kitchen. I would feel much safer if it was in the yard like it is supposed to be

2. The variance, if granted, would not:

A. Cause substantial detriment to the public welfare.

No

B. Impair substantially the purpose of the regulation from which the application seeks a variance.

I am trying to address this problem in the open, and legally, instead of sneaking in this tank. The problem, as stated before, my lot is not 1 acre as required by code. Do keep in mind, with the street end alley, actually add to the area almost another 1/4 acre.

The bureau may require the following supporting documents to be submitted with and as a part of this application:

1. Legal description of property concerned

NV. 89833

Spring Creek Rd. Shanty town

2. General area identification map

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APPLICATION FOR VARIANCE

- _ 3. Plat map showing locations of all pertinent items and appurtenances *Included*
- _ 4. Well log (if applicable) *NA.*
- _ 5. Applicable lab reports *NA.*
- _ 6. Applicable engineering or construction/remodeling information *NA*
- _ 7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application and supporting documentation will form the basis for the Division of Public and Behavioral Health staff report and recommendation(s) to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

Please schedule this hearing during:

The next regularly scheduled Board of Health meeting, regardless of location.

The next scheduled meeting in Carson City.

The next scheduled meeting in Las Vegas.

Signature: Richard Ripley
Printed Name: Richard Ripley
Title: owner
Date: 10/29/20

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

**PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING
ANY OF THE FOLLOWING METHODS:**

MAIL TO:

Lisa Sherych, Administrator
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

FAX:

775-687-7570

EMAIL:

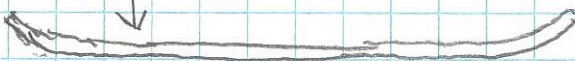
DPBH@health.nv.gov

← 93' →



↕ 220' ↕

Retaining wall



Hook to existing

New septic



New pipe to catch house sewage

Existing septic to be abandoned



← 13' →

27'

← 56' →

← 24' →

