

**TOWN OF CHARLESTOWN
ZONING BOARD OF REVIEW
MINUTES**

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, May 18, 2010 at 7:00 PM at the Charlestown Town Hall, 4540 South County Trail, Charlestown, Rhode Island.

Members present: Michael Rzewuski
Ronald Crosson
Raymond Dreczko
William Meyer
Richard Frank
Scott Northup, Alt. #1
David Provanca, Alt. #2

Also present were, Robert Craven, Assistant Solicitor, John J. Matuza, Building Official, Caroline Dion, Court Reporter and Ellen A. Hefler, Clerk.

Pre-roll

Everyone present will attend the June 15, 2010.

Minutes

The minutes of the April 20 and 26, 2010 meetings were approved as written.

Mr. Rzewuski called the first petition.

Petition #1177 Lynn Fiske Craig

Requesting a Special Use Permit under Article XV, Section 218-25 & 218-93 to allow an Accessory Family Dwelling Unit in an R3A Zone. Premises located at 505 Old Coach Road, Charlestown and is further designated as Lot 8-3 on Assessor's Map 27.

Ms. Craig was sworn and explained the petition. There will be no additions to the existing home, just finishing the basement.

There ensued discussion.

Mr. Meyer stated that the sections from which seeks relief. He asked how many people live in the house and if it would be for rent.

There were no objectors present.

Mr. Crosson moved that the public hearing be closed.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Crosson moved that petition #1177 Lynn Fiske Craig requesting a Special Use Permit under Article XV, Section 218-25 & 218-93 to allow an Accessory Family Dwelling Unit in an R3A Zone be approved. Premises located at 505 Old Coach Road, Charlestown and is further designated as Lot 8-3 on Assessor's Map 27.

Mr. Meyer seconded the motion.

The Board felt that the applicant has demonstrated that she has explored different alternatives. Under exhibit A, the applicant has submitted a complete application and the documents that satisfy the requirements of the Zoning Ordinance for the Special Use Permit.

VOTE: Crosson – aye Meyer – aye Frank – aye Dreczko – aye Rzewuski - aye

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the second petition.

Petition # 1178 Louis Raymond for South County Habitat for Humanity

Requesting a Dimensional Variance under Article IV, Section 218-26 A, B, C, D; Article VI, Section 218-32 and 218-33 A(2) to construct a Single Family Affordable Restricted Home closer to property lines than allowed in an R40 Zone. Premises located at Klondike Road, Charlestown and is further designated as Lot 131 on Assessor's Map 16.

Louis Raymond, for South County Habitat was sworn, explained the petition and the reason for the relief sought. Due to the narrowness of the lot, the variance is necessary to build on the lot. It will help the town meet affordable housing goals. He explained the layout of the house to demonstrate the least relief necessary.

Mr. Meyer asked if they had approached the owner of lot 130 to purchase some property that would increase the lot depth.

Mr. Raymond stated that they have talked to that owner, but may only be able to use a portion of the adjoining property, during the construction.

Mr. Rzewuski asked how they determined the number of bedrooms if a house.

Mr. Raymond stated that the need of an average family and the size septic system the lot will support dictates the number of bedrooms.

Mr. Dreczko questioned the porch and storage area on the original plan.

Mr. Raymond stated that the plans are being modified to minimize the amount of relief sought.

Mr. Meyer asked what progress they had made in acquiring a portion of the adjoining lot. There ensued discussion.

Mr. Matuza stated that this is a legal non-conforming lot that was created before zoning for residential use.

Mr. Meyer stated that it is one of the smallest lots he has seen.

Mr. Raymond stated that the lot is over 12,000 square feet.

Mr. Matuza added that it is hard to make an applicant go to a neighbor to acquire additional land.

There ensued discussion.

Mr. Dreczko stated that it is a pretty tight layout but that the lots off Laurel Road and Charles Avenue that was developed more recently are about the same size.

Chris Boyd of 450 Klondike Road was sworn and felt that there is not enough land to support a house and it is too close to the road.

There ensued discussion.

Guy Ippolito was sworn and stated that the lot is too small to support a well and septic system.

Mr. Rzewuski stated that the applicant submitted a DEM approval for the septic system and well.

Mr. Ippolito questioned the location on the curve of the road and the quarry to the rear. He asked if there were associated wetlands.

Mr. Dreczko stated that if wetlands would have to be shown on the plan that was approved by DEM. The house is proposed at 8' from the property line, but the plan shows that there is approximately 15' from the property line to the road surface, so the house would be 22-30' from the road.

Mr. Ippolito asked if a private citizen could have purchased the lot.

Mr. Matuza restated that this is a legal non-conforming lot of record and could be purchased by anyone.

There ensued discussion.

Mr. Dreczko compared the subject lot to others in the area.

Mr. Ippolito stated that he feels that the lot is in a bad spot and on a dangerous curve.

Mr. Raymond stated that the lot is over 12,000 square feet in area and about 200' away from the curve. There is an existing house on the curve. The homeowner of the proposed house will be able to turn around in driveway to avoid backing out onto the road.

Walter Frazier was sworn and questioned the size of the lot. This is an extreme lot, the size you would put a trailer on.

There ensued discussion.

Mr. Crosson moved that the public hearing be closed.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Meyer stated that he would like to see the applicant approach South County Sand and Gravel who owns the adjoining lot, in an attempt to acquire more land.

There ensued discussion.

Mr. Rzewuski pointed out that if the neighbors were opposed to construction on this lot, they should have gotten together and purchased the lot.

Mr. Crosson moved that petition # 1178 Louis Raymond for South County Habitat for Humanity requesting a Dimensional Variance under Article IV, Section 218-26 A, B, C, D.; Article VI, Section 218-32 and 218-33 A(2) to construct a Single Family Affordable Restricted Home closer to property lines than allowed in an R40 Zone be approved. Premises located at Klondike Road, Charlestown and is further designated as Lot 131 on Assessor's Map 16.

Mr. Dreczko seconded the motion.

The Board felt that the applicant demonstrated that they have a good design on a legal non-conforming buildable lot. The lot configuration is not unique to that area by any stretch of the imagination. The relief to be sought is not the result of any prior action of the applicant or owner and does not result in the desire of the applicant to realize greater financial gain. Granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the ordinance. The relief to be granted is the least relief necessary and not contrary to the public interest and welfare. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and structure, and is a pre-existing legal nonconforming lot record. The property was donated to South County Habitat for Humanity and was created long before zoning came into effect. It will not alter the character of the surrounding area. Based on the development off Oakwood Drive, Charles Avenue and two developments off Buckeye Brook Road, all developments are of smaller lots than what were there around 1970. This lot was created long before that. The gravel bank that is there now behind this property, while not part of this property, adds the look of a deeper lot and therefore does not adversely affect the use of the surrounding area. From a safety standpoint, consideration has been given to making the driveway as far north as possible and as far way from any road hazard as possible. Therefore it would be the least relief necessary and not contrary to the public interest and welfare. The property is zoned residential and the lot was created before the adoption of the first Zoning Ordinance in 1974, as Mr. Matuza stated. They have shown that they are seeking the least relief necessary and the hardship from which they seek said relief is due to the unique characteristics of the lot size and shape of the property and prior to the donation of the lot to Habitat. If this application was denied, there would have to be evidence of another reasonable use of the property.

Mr. Meyer voted to deny the application. While I support the 10% requirement for affordable housing and I have supported Habitat for Humanity for a long, long time, he feels that granting the requested relief will alter the general characteristics of the surrounding area and I have to agree with what the public came up with. I am familiar with the area and I have driven up there and there are some pretty big pieces of land and I think there should be other opportunities and they could come back to us with an increased side of the lot, if they had approached South County Sand and Gravel.

VOTE: Crosson – aye Dreczko – aye Frank – aye Meyer – nay Rzewuski - aye

THE PETITION WAS GRANTED WITH FOUR (4) CONCURRING VOTES.

Mr. Rzewuski called the third petition.

Petition #1171 MCF Communications LLC for Ann and Una Smith

Requesting a Special Use Permit and Dimensional Variance under Article IV, Section 218-25 and Article XV, Section 218-105(B)(4)(a) to install a Telecommunication Tower and Outdoor Cabinets in an R2A Zone. Premises located at New Biscuit City Road, Charlestown and is further designated as Lot 43 on Assessor's Map 29.

Edward Pare, attorney for the application presented as exhibit #1, a plan entitled MCF-Charlestown and reviewed the revised plan on Z1 and Z2 that was created based on the comments by the Planning Commission. He reviewed the proposed tower location and the buffering. The ordinance does not require any buffering but they are willing to provide 50'. He reviewed plan Z3 of the exhibit #1. There will be 5 carriers on the pole plus a shelter. He further explained the design of the pole, reviewed the antenna and equipment cabinets and stated that they are open to other design.

Mr. Crosson asked if they have the ability to put antenna on telephone poles. Scott Heffernan, Radio Frequency Engineer, was sworn explained the Radio Frequency maps and submitted his qualifications and report as exhibit #2. The Board accepted him as an expert.

Mr. Heffernan explained T-Mobile's coverage gap.
Mr. Dreczko asked how this site came available.
Mr. Heffernan reviewed the process for locating towers and identifying properties.
Mr. Rzewuski asked why the map did not showing the tower on routes 112 and 2.
There ensued discussion on the other towers.

Mr. Heffernan reviewed the coverage from this site. He reviewed the type of coverage for antenna on telephone poles and that they work for small pockets in flat areas with little or no tree canopy. In areas with challenging terrain need a tower. Phone poles, which are 30-40', would not work. They need the ability to provide coverage in vehicles and residences. Transmission is reduced dramatically when transmitting through a vegetative canopy. Some areas in Charlestown have underground utilities and utility companies have maxed out the pole.

Mr. Provanha asked if there would be a tower every 3-5 miles.
Mr. Heffernan stated that T-Mobile would like seamless coverage. This tower will provide space for five carriers.
There ensued discussion.

Mr. Pare called Mark Cook, site acquisition specialist with C. Davis and Associates or for T-Mobile was sworn. His job is to find a suitable structure to close gaps in coverage. He reviewed the process of finding existing structures or the possible location for a new tower. He explored the possibility of using the water tank at Kenyon Industries, but the company was not interested. He met with the Town Planner to be familiar with what the Planning Commission would be looking for, which contributed to their selection of this site.

There ensued discussion.

Mr. Rzewuski asked why they applied for a variance and special use permit.

Mr. Pare stated because the tower exceed 35' in height.

Mr. Rzewuski stated that in a revision of the Zoning Ordinance, it was included in the special use permit.

There ensued discussion.

Brad Gannon, partner with MCF communications was sworn. He focuses on collocation opportunities with for a number of carriers. There is a need for all of the carriers who have the same gap in coverage.

Edward Pimentel, expert planner, was sworn, presented his qualification and statement as exhibit #2. To answer Mr. Crosson's questions on DAS, although it is not part of this application, COX is pushing that right now and offered to discuss it after the meeting. To Mr. Rzewuski's question relative to the dimensional variance, stated that when an ordinance does not list towers as being exempt in the dimensional section, they apply for a dimensional variance.

The Board stipulated him as an expert.

Mr. Pimentel reviewed and clarified his report. He explained the process for tower locations in rural and urban areas. Collocation is always encouraged, which provides for the least visibility. Most of the adjoining properties to this lot are very large. It is a very low density area, which was the reason that this site was considered. The nearest dwelling is 450-600' or further. Because of the tree canopy, the closer you get to the tower, the less you can see. The comprehensive plan does address towers and they have done their best to locate it in a residential area. The proposed site is consistent with the Zoning Ordinance and the Comprehensive Plan. Many communities try to prepare themselves for the inundation of towers that they believe are coming. They establish a higher arc of trying to locate towers. First, try to accommodate towers on municipal property. If there is revenue to be generated, the municipality would want take advantage of that first while locating them on existing structures and water towers to avert the proliferation of towers. So the community does its own analysis, provide a list, show the industry where they would like towers located, if they can't meet one of these requirement, the company would have to explain and document why. The next step in the higherarcy would be utilizing other existing towers or structures that can accommodate the carrier like silo or church spire. Some communities have meetings every 6 months to do further analysis and update their information with new buildings and structures. The carriers meet with the city or town, receive the list and if they chose not to collocate, must go through the list and document every one of those sites and why they will not work, before proposing a collocation or tower. Rural areas are predominately zoned residential, which presents a challenge to locate them where they are conditionally permitted rather than needing a use variance.

Mr. Northup asked, if there are so few homes in this area, why did they choose this location, were they trying to cover railroad passengers?

Mr. Pimentel stated their coverage goes a lot further than visual impact.

George Valentine, Real Estate expert was sworn. He entered his consulting report as exhibit #3 and reviewed the particulars of the lot in the area. This tower will be well buffered by trees and have no impact on values before or after tower.

There ensued discussion.

Mr. Valentine stated he has interviewed several Tax Assessors and it has never decreased value of property because of the location of a cell tower.

There ensued discussion.

Mr. Dreczko asked if read letters from realtor and his opinion.

Mr. Valentine stated that the language in the letters is subjective, using the terms, *could, would, might, it would be my opinion*. An appraiser evaluates actual sales. They compare sales data, which shows that sales do not support their argument.

There ensued discussion.

Mr. Valentine stated that the letters are written by realtors and brokers, who market real estate. He analyzes actual sales data.

Brad Gannon explained the flying of the balloon and entered his report as exhibit #4. He presented photos from the road as exhibit #5 and explained each and a chart of visibility as exhibit #6. Trees in the area are 40-80' tall. The closer you get to the tree line, the less visibility. If the property owner's clear-cut their lots, there will be more visibility.

Mr. Crosson asked about the design.

Mr. Gannon stated the design is for the antennas to be on the outside of monopole.

Mr. Pare entered as exhibit #7 a letter on tower designs at actual locations and reviewed same. The tower being proposed would be 7C with 3 antennas per sector.

Mr. Crosson asked if they would get the same coverage inside or outside the antenna.

Mr. Heffernan stated there is a slight degradation inside the pole. Internal antenna reduce upgrade ability dramatically. He gave some flexibility options, technology advances and explained same.

There ensued discussion.

Mr. Pare entered as exhibit #8, a tower similar to the proposed.

The Board received a memo from Ashley Hahn Morris, Town Planner dated May 12, 2010 with the Planning Commission's advisory recommendation to the Zoning Board.

The Board received letters were received from Sandra Puchalski, Real Estate Broker relative to 39 New Biscuit City Road, 63 New Biscuit City Road, 19A/B New Biscuit City Road, from Angela Dupouy of Randall Realtors, Paul Gunning of Ron Smith Homes about contract prices near cell towers and Steve McGill of Waterfront Properties about 39 New Biscuit City Road.

The Board received a letter from Justine Rickel feels distance of 600-700' from existing property lines would be appropriate and one from Jacqueline Rickel stating she would never have purchased in the area if she had known that a tower was a possibility.

There ensued discussion.

Mr. Dreczko asked Mr. Gannon about the balloon test that flew about 3-7 days out of the required. He reviewed other application.

Mr. Gannon stated that the ordinance requires that the balloon be tethered on string.

There ensued discussion.

Mr. Dreczko presented 4 photos of debris left after a balloon on another site was picked up.

Mr. Cook stated that the company did not remove accessory components and would contact them in the morning.

There ensued discussion.

Mr. Craven stated that if the Board feel the balloon needs more flying time, it can require continued to next month to satisfying that section of ordinance be met.

Mr. Pare explained effort to fly and in accordance with the ordinance. Also sent abutters letters relative to flying balloon, which is not required. Goal is to put the information out there.

Mr. Rzewuski asked if the Planning Commission would be revising the Zoning Ordinance and look at revision of this section.

Mr. Matuza stated that it would be in the future.

Mr. Rzewuski suggestion that a memo be sent to the Planning Commission asking that they address the method of flying the balloon.

There ensued discussion.

Mr. Rzewuski read Section 218-105 (4)(g), requiring posting of a demolition bond to the Town, in an amount sufficient to insure removal of the tower/pole and accessories.

Mr. Pare stated that they usually the bond is based on an estimate of the cost to remove the equipment that would be submitted to the town.

Mr. Rzewuski asked if the tower would be in the migration patterns.

Mr. Pare stated that they need to comply with National Environmental Policy Act and will comply with every applicable Federal standards.

There ensued discussion.

Mr. Dreczko asked if his understanding was correct in that they do not need 9 antennas to start with but can get by with 6 for right now.

Mr. Heffernan stated that was correct.

Mr. Gannon stated that other carriers have different numbers of antenna.

There ensued discussion.

John Morgan was sworn and presented a photo of balloon taken from his property. If installed, it could affect rental ability of the apartment. He offered 2 lots across Biscuit City Road as alternate locations.

There ensued discussion.

Mr. Morgan stated he would rather see more stealth towers than fewer towers with exterior antennas.

Jacqueline Rickel was sworn and stated that she monitored the balloon for 3-4 consecutive days. She would like to see the balloon flown a few more times. She felt that the safety factor was not addressed if the tower falls. It is a very windy area. The Planning Board recommended a stealth tower. She would prefer to see the tower located further from the homes.

There ensued discussion.

Mr. Pare stated Mr. Morgan's duplex was located 600' from the proposed tower location and his house 650'. The Rickel home is approximately 450' from the proposed tower.

There ensued discussion.

Mr. Pare stated that the tower has to comply with engineering requirements and the building code. The setbacks exceed the Zoning Ordinance requirements. Poles are designed to stand and not fall over, that is why the designs are engineered. There is good screening.

There ensued more discussion.

Mr. Gannon stated that internally mounted antennas require increased traffic with a crane each time and requires a larger cleared area.

Justine Rickel was sworn has a problem with a 55 acre parcel having a tower so near other homes. The houses can't be moved and it is the worst location on the property. There ensued discussion.

Mr. Pare stated that there are limitations when the tower is moved away from New Biscuit City Road. The location on the lot was chosen because of the tree cover. There are other limitations on the lot with loss of coverage. They prefer to collocate, but that was not an option in this area.

There ensued discussion.

Mr. Pare stated feels the 50' buffer is adequate, considering there is no buffer required by the Zoning Ordinance. The applicant could have cleared lot before the application was made, but they did not. The owner is willing to agree to a 50' buffer.

Ruth Platner, Chairman of the Planning Commission was sworn and stated that if the Board increases the height of tower, they need to increase the setback. The Planning Commission was told that the tower on route 112 and route 1 would be the only towers. The Planning Commission feels that it would be better to have more stealth towers than to have higher towers with more collocation because technology changes.

There ensued extensive discussion.

Mr. Dreczko reviewed his experience with the existing towers in the community and that the tree canopy tends to camouflage them, once they have been up a while.

There ensued discussion.

Ms. Platner stated that the buffer is the only screening that this lot will have because it will be developed. She reviewed some of the requirements for a cluster subdivision. There ensued discussion.

Mr. Dreczko stated that he would like to continue the application to get the balloon flown. He doesn't feel that a week or less of a 3 week requirement is not allowed. There ensued discussion.

Mr. Pare stated that they complied with the ordinance requires. The Board members felt that the applicant met the requirements of the Ordinance with the exception of Mr. Dreczko.

Mr. Crosson asked Ms. Platner, based on the advisory opinion of the Planning Commission, that they were in favor of the proposed project.

Ms. Platner stated that they review only the site plan and wanted to state their reservations about approval of, support of or need for the tower. They review only esthetics, access to and from the road as though they were building an apartment building. It is up to the Zoning Board to determine if there is actually a real need or if there are other technologies available.

There ensued discussion.

Mr. Rzewuski asked Mr. Pare if he was agreeable to a tower 150' high with close mounted antennas and the ability to extend it to 170' in the future.

Mr. Pare stated that they would have to move the pole 5' and they would be agreeable. There ensued discussion.

Mr. Meyer moved that the public hearing be closed.

Mr. Frank seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Meyer moved that petition #1171 MCF Communications LLC for Ann and Una Smith requesting a Special Use Permit under Article IV, Section 218-25 and Article XV, Section 218-105(B)(4)(a) to install a Telecommunication Tower and Outdoor Cabinets in an R2A Zone approved for a 105' high tower with close mounted antennas and the ability to extend it to 170' in the future. Premises located at New Biscuit City Road, Charlestown and is further designated as Lot 43 on Assessor's Map 29.

Mr. Dreczko seconded the motion.

The Board felt that after exhaustive testimony and compliance with all of the Zoning rules and regulations, that we permit the erection of a 150' close mounted antenna. It is controversial but the applicant tried to meet the intent of the ordinance, and I realize that as it relates to the required balloon flying, is not totally user friendly, that has been the topic of discussion on previous applications. The applicant was more than willing to work with us as far as the type of pole, antenna array, how high and work toward future expansion. We agreed to have close mounted rather than stealth.

I vote to approve a 150' tower with close mounted antennas, with the ability to expand to 170' and the applicant agreed to move it 5' to meet the 1 ½ safe fall zone and the applicant has met the requirements on that.

Mr. Dreczko voted to deny the petition. Section 218-105 was not satisfied. While I certainly understand Mr. Pare's position with respect to the balloon, 218-105, Section B(2)(g) doesn't arbitrarily say that it can be anything less than 3 weeks. I feel that a reasonable time frame would be two thirds of the required time. Two weeks would be sufficient. It was kind of blown off with the fact that Mr. Gannon did supply pictures, with respect to the balloon being flown. However, through his own testimony, those pictures were not presented to any of the abutters prior to this evening, so no one got the satisfaction or the ability to view the balloon flying in and of its own free will or see the pictures. If he had sent the pictures out, had the balloon flow for 2 of those 3 weeks, I would view it a little differently, but, again because the requirements were not met, I have no choice but to deny the application.

Mr. Crosson voted to deny the application because he feels that the abutters should be heard. They are the ones that have to live around the structure. As one of the abutters said, they can't move the house. If they feel the visual impact would be best suited for them as a stealth pole, then I think abutters should have that opportunity to be heard and listened to.

VOTE: Meyer – aye Dreczko – nay Frank – aye Crosson – nay Rzewuski - aye

THE PETITION WAS DENIED 3-2.

Mr. Pare suggested that he believed that the board has a consensus on a stealth pole and, if there was such a motion, it may avoid a lot of aggravation for all involved. There ensued discussion.

Mr. Craven suggested that someone move to amend the motion to allow a stealth pole. Mr. Crosson moved to amend his motion to allow a 150' stealth pole. Mr. Meyer seconded the motion.

THE BOARD UNANIMOUSLY VOTED TO AMEND THE MOTION TO ALLOW FOR A 150' STEALTH POLE.

VOTE: Crosson – aye Meyer – aye Frank – aye Dreczko – nay Rzewuski – aye

THE PETITION WAS GRANTED 4-1 TO ALLOW FOR A 150' STEALTH POLE.

Adjournment

There being no further business, the meeting adjourned at 11:30 PM.