

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, March 16, 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
David B. Provancha, Alt. #2

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

Minutes

The minutes of the February 16, 2010 meeting were approved as written.

Pre-roll

Everyone present will attend the April 20, 2010 except Mr. Crosson.

Mr. Rzewuski called the first petition.

Continuation of petition #1166 Thomas Doyle

Requesting a Dimensional Variance under Article VI, Section 218-32 A and 218-33 A(2) to construct a garden shed closer to property lines and exceeding the allowable lot coverage in an R2A Zone, revised from the original plan. Premises located at 32 Neptune Avenue, Charlestown and is further designated as Lot 143 on Assessor's Map 2.

Mr. Rzewuski stated that Mr. Meyer is recusing himself as in the last hearing. Members voting on this case would be Messrs. Rzewuski, Dreczko, Crosson, Frank and Mr. Provancha.

Mr. Doyle explained the revised site plan to minimize the relief sought by moving the shed to the north corner of the property.

There ensued discussion on possible locations that would require less relief.

Mr. Dreczko asked Mr. Matuza about the shower unit in front of the shed.

Mr. Matuza stated that it is not an issue. It was installed prior to the CO for the house 10-12 years ago. He added that Mr. Doyle has re-noticed the abutters of the change of plan. There ensued discussion.

Wallace Kelly was sworn and spoke in support of the application.

Elizabeth Noonan, attorney for Donald MacDougall, abutter to the Doyle property spoke in opposition to the amended location. She presented a map of the area and stated that Mr. MacDougall was in favor of the original location.

There ensued extensive discussion.

Mr. Dreczko reviewed the neighborhood and stated that all other sheds are located in the back yards.

There ensued further discussion.

Ms. Noonan stated that her client would prefer that the shed remain on the side of the property because it would have the least affect on Mr. MacDougall. The requested relief is a direct result of prior action of the applicant and there has been no demonstration of need.

There ensued further discussion.

Ms. Noonan asked that the Board grant the original plan, move shed in front of the garage or deny the application.

Mr. Matuza stated that the garage is on the front setback line. Moving the shed in front of the garage would require a front setback variance.

Letters were received from John Magenheimer and Christine O'Sullivan, James F. and Elaine F. Blair, Donald B. MacDougall, Lynn M. Morrill and Bernhard and Margareethe Kulke in support of the application.

Mr. Dreczko asked the owner asked if it is still his intent to use the shed for gardening supplies.

Mr. Doyle stated that it is still his intent and added that there is a very small one car garage, which hardly holds a car. There are other sheds in the area not in compliance with the setback requirements. The height of the shed is 9'7" high. He reviewed the revised site plan that was drawn to minimize the relief sought and still have access to the septic system.

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. Dreczko moved that petition #1166 Thomas Doyle requesting a Dimensional Variance under Article VI, Section 218-32 A and 218-33 A(2) to construct a garden shed exceeding the allowable lot coverage in an R2A Zone, as revised from the original plan be approved. Premises located at 32 Neptune Avenue, Charlestown and is further designated as Lot 143 on Assessor's Map 2.

Mr. Crosson seconded the motion.

The Board felt that the applicant stated that the need for the shed is for gardening tools and equipment. He also stated that the existing garage is used as a garage and there is very limited storage. His neighbor helped to support the argument that lot coverage shouldn't be an issue because most of the neighbors are in favor of the shed either in the existing location or the proposed new location. Mr. Doyle did address the need for the shed for storage. The lot coverage is only proposed at the back corner, but the second half of the application will be for setback variances.

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

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

There ensued discussion on the dimensional variance.

Mr. Dreczko moved that petition #1166 Thomas Doyle requesting a Dimensional Variance under Article VI, Section 218-32 A and 218-33 A(2) to construct a garden shed closer to property lines in an R2A Zone as revised from the original plan be approved. Premises located at 32 Neptune Avenue, Charlestown and is further designated as Lot 143 on Assessor's Map 2.

Mr. Provancha seconded the motion.

The Board felt that with the amended setbacks, the applicant came before the Board with the existing shed completely in violation of the setbacks. Due to the size of the lot and location of the septic system, I believe that they made a reasonable deduction of where the D box and leach field are located and with the proposed shed being kitty corner on the rear corner of the property, at most it would take up 50 percent of the setback area as what it does not and 50 percent is being generous. It is under that, without question. With respect to whether or not he has proven that he needs the shed, based on the lack of storage for gardening, mowing, manicuring the yard, maintaining the open space to look as good as it can and comply with the surrounding area, he certainly needs the tools and equipment to carry through with that. The hardship from which the applicant seeks relief is due to the size of the lot, unique characteristics of the area. It is the least relief of prior action but he is trying to correct that action. It will not alter the character of the surrounding area. In fact it will comply more and having driven through the neighborhood, the sheds tend to be in the rear yard not in the side yard and it would be the least relief necessary and not be contrary to the public interest and welfare.

Mr. Rzewuski voted to deny the application because of the least relief necessary and Mr. Dreczko did not do a good job in convincing me. I believe that it is up to the applicant to have all the information needed and not come before us and say, 'I think it is here or I don't think it is here.' Mr. Doyle was instructed to come back with an amended application to demonstrate the least relief necessary and this evening he was asked to square up the amended location and his refusal to comply with the least relief necessary is one reason why I can not vote in favor of this application. His lot size was the problem. The applicant when he bought the property did know that it was a small lot and therefore can not claim that as a hardship. It was a small lot when he bought it and therefore, it is not any prior action as such, but the fact that it is being denied is not more than a mere

inconvenience because the major purpose of this application is that of a residence and he also does have some storage locations in his basement and some in his garage. Also, it does not amount to more than a mere inconvenience in saying that he is trying to meet the Board half way. He constructed a shed on the side of his house illegally and based on all these reasons, I vote to deny this application.

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

THE DIMENSIONAL VARIANCE PORTION OF THE APPLICATION WAS APPROVED WITH FOUR (4) CONCURRING VOTES.

Mr. Rzewuski called the second petition.

Petition #1156 Margaret L. Hogan for Randall Rifelli

Requesting a Dimensional Variance under Article IV, Section 218-26 and 218-33(2) to demolish and replace a single family dwelling closer to property lines with OWTS (Advantex AX 20) in an R20 Zone. Premises located at 43 East Shore Drive, Charlestown and is further designated as Lot 362 on Assessor's Map 11.

Margaret Hogan, attorney for the applicant, explained the history of the application and attempts to resolve issues with an abutter prior to this public hearing. They have been unable to resolve the abutter's opposition. The current home is serviced by a cesspool. The proposal is to replace the existing house and cesspool with a new home and state of the art denitrofication septic system.

Randall Rifelli was sworn and explained the approval of the new septic system and entered the DEM approval as exhibit #1, the existing site plan as exhibit #2 and the proposed site plan as exhibit #3. Mr. Rifelli stated that he had received a professional opinion that the existing structure could not be renovated, but would need to be replaced.

An unidentified individual objected to the submission of a professional opinion by someone other than the professional.

Mr. Rifelli stated that he has been a structural engineer for over 20 years and in review of the plans has determined that the existing structure could not be renovated and support a second floor without substantial renovations.

Mr. Dreczko asked for Mr. Rifelli's credentials.

Mr. Rifelli stated that it could be provided.

There ensued discussion.

Mr. Rifelli reviewed the consent agreement with DEM including the proposed floor plan as attached to the application. He reviewed the square footage of the homes within 200 feet of the lot in question and entered same as exhibit #4. He entered as exhibit #5 a plan of the proposed east elevation that showed the building height and that it would need no height variance.

There ensued discussion.

Ms. Hogan and Mr. Rifelli explained a series of photos as exhibit #6A-I of the existing house and others in the neighborhood and CRMC requirements.

Ms. Hogan reviewed the requirements of DEM, Charlestown Zoning and CRMC and added that the applicant has to meet the requirements by each body. Paul Natale, builder, is present for any questions that the Board may have.
There ensued discussion.

Mr. Dreczko asked why the shower was on the side of the house and not under the deck. Mr. Rifelli stated that there was only about 7' of clearance.
There ensued discussion.

Ms. Hogan stated that after 5 years in the permit process, the applicant has accepted a major concession by agreeing to construct only a one bedroom home when DEM does not allow a system smaller than 2 bedrooms. The application to DEM to replace a failed cesspool was originally denied by DEM.
There ensued discussion.

Jim Donnelly, attorney for an abutter questioned the existing square footage of the house. Mr. Rifelli reviewed the existing condition and proposed design.
There ensued discussion.

Mr. Crosson reminded Mr. Donnelly that the applicant was before the Board for dimensional variance and not for the septic system.
There ensued discussion.

Mr. Donnelly questioned the need for the added living space.
Mr. Rifelli explained the portions of the house being used for utilities.
Ms. Hogan stated that the plans show the floor plan as approved by DEM and Mr. Rifelli has already testified as to the use of the rooms.
There ensued lengthy discussion on the size and use of each room.

Mr. Rzewuski stated that the Board tries to adjourn by 10:30 PM, so it is unlikely that they will get to the remaining agenda items.
There ensued discussion.

Both applicants agreed to stay.
Mr. Crosson reminded the Chairman that he will not be at the April meeting.

An unidentified person asked for continuance.
There ensued discussion.

Petition #1172 Richard and Joan Thomsen for Joan Thomsen Trust, Matthew Thomsen Trustee

Requesting a Special Use Permit under Article VI, Section 218-25 A and Article VI, Section 218-33 F to construct an addition to a non-conforming use in an R3A Zone. Premises located at 283 West Beach Road, Charlestown and is further designated as Lot 149 on Assessor's Map 3.

Mr. Crosson moved that the petition be continued to April 20, 2010.
Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO APRIL 20, 2010.

The Board returned to the Rifelli petition.

Paul Natale, contractor for the applicant, was sworn.
Mr. Meyer asked if Mr. Rifelli was going to have the architect testify.
Mr. Rifelli stated that he hired an architect to do a feasibility study before he purchased the property.
There ensued discussion.

Mr. Dreczko asked if there was is a reason why the house was 26 feet wide.
Mr. Natale stated the dimension included the stairway. Anything any narrower would make a stairway to the second floor very difficult.
There ensued extensive discussion.

Mr. Natale added that the shower could be installed as proposed and the enclosure would be removed. He explained why the shower could not be installed under the deck.
There ensued more discussion of eliminating the side yard setbacks.

Mr. Matuza clarified that the walk out as it relates to the FEMA regulations.
There ensued discussion.
Mr. Natale stated that he would work with Mr. Matuza on the walk out when applying for the building permit.

Ms. Hogan stated that her client will have to rework the plan to show only a front yard variance.
Mr. Rzewuski asked Mr. Donnelly if it made his client happy.
Mr. Donnelly stated no.
There ensued discussion.

Mr. Donnelly questioned other work Mr. Natale did across the pond.
There ensued discussion.

Mr. Natale stated DEM dictated the size of the building, rooms, window locations, etc.
There ensued further discussion.

Mr. Donnelly asked if the building had to be located so close to the road.
Mr. Natale stated that they worked with DEM and the proposal is better than the existing.

Mr. Dreczko asked when the building asked if the current building could meet code. Mr. Natale stated that even the foundation doesn't meet code and would have to come out as well as many other changes to the existing building and would still need variances. There ensued further discussion on possible changes.

Mr. Meyer asked Mr. Donnelly what his client's objections is. Mr. Donnelly stated the side. Mr. Rzewuski asked the size of his client's house. Mr. Donnelly stated that he would get to that.

Mr. Dreczko pointed out that the existing house is 21'x33'. When comparing house dimensions, Mr. Donnelly is including the deck in the on the proposed house but not in the existing house. Mr. Rifelli agreed.

Mr. Crosson stated that the existing house is non-conforming and asked if the proposal would make the new house more conforming. Ms. Hogan agreed. There ensued discussion.

Mr. Meyer stated that the YMCA needs to have their case heard to prepare for the season and that he would be willing to stay so they could be heard.

There ensued discussion.

Mr. Donnelly stated that he had about an hour of testimony. There ensued discussion.

Ms. Hogan stated her concerns with continuance and being heard. The Board agreed to table the discussion and hear the YMCA.

Mr. Rzewuski called the fourth petition.

Petition #1170 Ocean Community YMCA for YMCA of Westerly – Pawcatuck

Requesting a Dimensional Variance under Article VI, Section 218-32 C to construct a climbing wall higher than allowed in an R2A Zone. Premises located at 160 Prosser Trail, Charlestown and is further designated as Lot 116 on Assessor's Map 17.

Maureen Fitzgerald, President and CEO of the YMCA was sworn. Their attorney, Steven Morgan, explained the existing climbing tower and that they propose to move it to this property. There ensued discussion.

Mr. Meyer asked about the proximity of neighbors. Ms. Fitzgerald stated that it would be further away. 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. Dreczko moved that petition #1170 Ocean Community YMCA for YMCA of Westerly – Pawcatuck requesting a Dimensional Variance under Article VI, Section 218-32 C to construct a climbing wall higher than allowed in an R2A Zone be approved. Premises located at 160 Prosser Trail, Charlestown and is further designated as Lot 116 on Assessor's Map 17.

Mr. Crosson seconded the motion.

The Board felt that the relocation of the tower will be as neighborly friendly if not more so because of the slope of the property, the positioning off the property line and is for the education and enjoyment of the children that go through YMCA. Granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this ordinance. The applicant has shown that the tower is being relocated from another property and will make the location better than it was previously.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

The Board continued discussion on the Rifelli continuance.

There ensued discussion on order.

Mr. Dreczko stated that the Board has already suspended testimony on this application to hear the YMCA, in an effort to minimize the number of continuances and that the Thomsen application will be the first one following the Rifelli continuance.

Mr. Crosson moved that the petition be continued to April 20, 2010.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO APRIL 20, 2010.

Discussion among members

Mr. Matuza stated that he had given the Board a memo about tolling as it relates to prior decisions. It will be on the agenda for the next meeting for a motion.

There ensued discussion.

Adjournment

There being no further business, the meeting adjourned at 10:40 PM.