

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, April 20, 2010 at 7:00 PM at the Charlestown Town Hall, 4540 South County Trail, Charlestown, Rhode Island.

Members present: Michael Rzewuski
Raymond Dreczko
William Meyer
Richard Frank
Scott Northup
David B. Provancha, Alt. #2

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

Minutes

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

Pre-roll

Everyone present will attend the April 26, 2010 everyone.

Mr. Rzewuski called the first petition.

Continuation of 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.

Mr. Rzewuski stated the members voting on this petition would be, Messrs. Provancha, Frank, Meyer, Dreczko and Rzewuski.

Margaret Hogan, attorney for the applicant submitted Rifelli's qualifications as exhibit #7 and findings of fact #8.

James Donnelly, attorney for the Prasols stated that they are concerned with the size being too big. He entered a copy of Section 218-30 district uses of the Zoning Ordinance as objectors' A and referred to Section 218-30 (6). He entered a map of lots in the area noted in yellow, orange and pink as objectors' exhibit B, Assessor's information on Map 11; Lot 360 as objectors' exhibit C, Map 11; Lot 349 objectors' exhibit D, Lot 357 objectors' exhibit E, Lot 338 objectors' exhibit F, Lot 346 objectors' G, Lot 349, 338 and 346 comparison of floor as objectors' H. Three of the properties have 3 floors. The Prasol property, Lot 363 was entered as objectors' I, Rifelli property lot 362 objectors' J,

the requested Rifelli coverage objectors' K, living areas as objectors' L. He reviewed 218-33 exhibit M. He reviewed other state and local approvals required. The proposal is to replace a 21'x25' house with a 34'. He entered the Wastewater Management District regulations as exhibit N and reviewed the definition of a bedroom, RI General Laws Zoning enabling act objectors' O and summarized same. He entered Sections 218-25; 26; 32; and 33 as objectors' exhibit P. The definition section of the Zoning Ordinance as objectors' exhibit Q, reviewed the building envelope and constraints to development. He reviewed other cases considered before the Board in the last 18 months as objectors' R. The proposed construction is large even for a larger lot. The interior layout is important and board should look at what makes sense.

There ensued discussion on the size of the rooms.

Mr. Dreczko stated the 25'x15' is the kitchen and dining room combined.

Mr. Donnelly stated that the Prasols are concerned with public health. The proposed construction will draw use by more people and it is close to the Prasol's well.

There ensued discussion.

Mr. Dreczko stated that the only variance is for front setback; the proposed construction meets side and rear setbacks and lot coverage.

Mr. Matuza stated that the allowable lot coverage is a footprint of 26%.

There ensued discussion.

Ms. Hogan stated that Mr. Donnelly referred to the outside shower. That request was dropped and there will be a shower head with no enclosure. The variance for stairs must remain because of the steep grade.

Mr. Donnelly made closing arguments.

There ensued discussion.

Mr. Dreczko asked Mr. Donnelly if he realized that the Prasol bulkhead is about 2' off line. He added that there are not more than 2-3 housed more than 15' off the front lot line and asked Mr. Matuza if the eaves were included in the footprint.

Mr. Matuza stated that the Zoning Ordinance allows a 1' eave beyond the setback requirements.

There ensued discussion.

Margaret Hogan submitted plat maps of lots in the area with similar areas as Applicant's exhibit #9. The proposal is for 884 sq.ft. footprint from the existing 525 sq.ft. and made closing arguments.

There ensued discussion on the footprint.

Paul Natale, builder for the applicant, stated that he met with the Building Official. The foundation needs to be 3'-4' out of the ground for flood plain. Stairs are needed for access to the house.

There ensued discussion.

Mr. Donnelly the living area of properties on East Shore Drive as objectors S and reviewed same. He entered information relative to 43 East Shore Drive as objectors' T and reviewed same.

There ensued discussion.

Catherine Graziano of 19 Shore Drive was sworn, stated that she is very familiar with the area and spoke in favor of the application.

There were no additional objectors.

The Board received letters of support from Nora and Keith Bradley, Richard and Lisa McCalisters, Alice W. Russell and Paul Cregan in support of the application.

There ensued extensive discussion.

Mr. Dreczko moved that the public hearing be closed.

Mr. Meyer seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Dreczko asked the Building Official if the 3 season room could be winterized in the future.

Mr. Matuza stated that a porch or 3 season room can add heat without additional approvals by the board. He added that the Zoning Ordinance allows 1' for eaves beyond the setbacks.

There ensued further discussion.

Mr. Dreczko moved that 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 be approved. Premises located at 43 East Shore Drive, Charlestown and is further designated as Lot 362 on Assessor's Map 11. The findings of fact as I see it is, in keeping with the surrounding neighborhood, the existing home sits approximately 15' off road, as is proposed in this application. Having been in the neighborhood and hearing testimony from an abutter who is in favor of this application, it fits in the neighborhood. A lot of the homes are that distance off of the road. That area, using a little common sense, keeping with the theme of the neighborhood, I don't see a need to push it further off road because, at that point, it would stand out in the neighborhood as opposed to comply with the existing visual effect of the home. The septic system as it pertains to the location of additional septic systems and wells in the surrounding area, as DEM has approved it. The location tends to dictate the home to a degree as a 26' by 34' home. The lot coverage, the footprint of it, is a modest size home. The additional open deck, while at some point it could be a heated space and add to that, today, as it was presented to us would be a 3 season room. It is simply a covered porch. It is open to interpretation. It could have been presented just as other applications where you need relief from the mosquitoes to enjoy the outdoors. The deck itself in 12' in depth is a modest size; the testimony was that, in putting patio furniture out on it, it allows ample room to get in and

around the table on deck. Going back to the size of the home, because of flood zone, the mechanicals take up space in one of the rooms on 1st floor. The main living space will be on the second floor. My understanding to codes with respect to bedrooms, the criteria has been met. There have been meetings with Mr. Matuza to get verification of those not being bedrooms. While I respect Mr. Donnelly's comment about using common sense, many aspect where common sense comes in for one individual may not be common sense for another. I need something concrete as opposed to common sense. That is why the code is written the way it is, to take common sense out of the equation and give you something concrete to nail down what a bedroom is vs. living space vs. storage space, etc. In my opinion, they were not excessive with the application. The only relief is simply dimensional and that is because of the size of the existing lot. While I think Mr. Donnelly is trying to state that the lot being 50' in width, mandates the home should be smaller, the reason that we have those modified setback requirements, is because these lots are of record prior to zoning and you do have to have a little give and take to make them usable for today's ways of living. I don't find anything about the footprint excessive. They did come to the table and take the shower off the side of the home, so that 4' of relief has been resolved. It has been agreed upon that the entry stairs to the northeast side of home reduced would be reduced from the 4' on the plan to the minimum code requirement of 3', therefore making it a 9' variance. The front setback would end up being 15', again, with what's been stated in the application, basically where it is now. Mr. Meyer seconded the motion.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the second petition.

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.

Richard Thomsen was sworn and read an explanation of the proposed addition and the relief sought. There will be no additional traffic and a minimal increase in lighting. There ensued discussion.

Matthew Thomsen, trustee of the trust, was sworn and spoke in favor of the application. The Board received letters from Shirley K. Lavery and James Mara in favor of the application.

There were no objectors present.

Mr. Meyer moved that the public hearing be closed.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Meyer moved that 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 be approved. Premises located at 283 West Beach Road, Charlestown and is further designated as Lot 149 on Assessor's Map 3. The requested Special Use Permit will not alter the general characteristics of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Plan upon which the ordinance is based. The granting of the Special Use Permit will not pose a threat to drinking water and will not disrupt the neighborhood. He already has a new septic system, so that is already taken care of and I see no evidence of increase in traffic. Mr. Northup seconded the motion.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski pointed out that takes no evidence after 10:30 PM.

Mr. Rzewuski called the third petition.

Petition #1174 T-Mobile for Fred and Patricia Vohr

Requesting a Special Use Permit and Dimensional Variance under Article IV, Section 218-26 and Article XV, Section 218-105 to construct and operate a Wireless Telecommunication Facility and Tower higher than allowed in an R3A Zone. Premises located at 51 Edwards Lane, Charlestown and is further designated as Lot 19-1 on Assessor's Map 24.

Edward D. Pare, Jr., Attorney for the applicant, explained the petition and reviewed pages Z2, Z3 of the plans and the antennas proposed. On March 26th they erected the balloon. March 24th they received site plan approval from Planning with conditions. He reviewed same.

Edward Pimentel, expert in Planning and Zoning was sworn and explained the petition. He entered as exhibit #1 his report and resume.

Mr. Pare stated that they had explored the adjoining property owned by the Nature Conservancy and found that it is not suitable. The proposed tower has provisions for 3 colocation points for additional carriers. The nearest dwelling is over 600' away and there is a lot of tree canopy to shield the tower. He reviewed 218-25 for burden of proof.

Mr. Dreczko asked why they could not meet the fall zone.

Mr. Pimentel stated that to meet the fall zone requirements it would have to be located in the center of the lot. They are trying not to clear cut trees and keep it as far as possible from nearest house.

There ensued discussion.

Mr. Pimentel stated that at the closest point it will be 1.25% times the height of the tower. Mr. Pare stated the nearest property is Amtrak.

George Valentine, appraiser, was sworn. The Board recognized him as an expert. He reviewed his report that was submitted as part of the application.

Mr. Rzewuski asked for the lease.

Mr. Pare noted that Mr. Vohr signed the application and submitted the lease as exhibit #2.

There ensued discussion.

Douglas Bardsley, owner of the adjoining property was sworn, stated that he was aware of the application before he purchased the property and that he was aware that he was within the fall zone area.

Mr. Rzewuski referred to the Planning Commission Memo and the desire to have internal antennas.

Scott Heffernan, Radio Frequency Engineer, was sworn. The Board stipulated that he was an expert. He explained the T Mobile coverage and coverage gap.

There ensued discussion.

Mr. Rzewuski asked about collocation on the tower at the corner of Rtes 2 and 112.

Mr. Heffernan submitted the existing T-Mobile on air coverage as exhibit #3 and reviewed same.

Mr. Dreczko asked the difference between internal and external antenna.

Mr. Heffernan stated that the footprint is the same. Internal mounts have limited capacity. External mount tower allows multiple antennas on one antenna height.

There ensued discussion on the number of poles needed for internally mounted antennas.

Mr. Rzewuski asked for information about number of towers needed for internal style pole vs. external.

There ensued discussion.

The Planning Commission Advisory Memo dated April 6, 2010 was received by the Board members and a copy is in the file.

There ensued discussion.

Mr. Meyer moved that the petition be continued to April 26, 2010.

Mr. Frank seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE APPLICATION TO APRIL 26, 2010.

Mr. Rzewuski suggested that discussion among members be continued to the next meeting.

Discussion among members

Discussion and vote on the Building Official's tolling determination.
Discussion of Holmes Court decision and other pending cases.

The Board unanimously voted to continue the Discussion among members to the meeting on April 26, 2010.

Adjournment

There being no further business, the meeting adjourned at 11:00 PM.