

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, October 19, 2010 at 7:00 PM at the Charlestown Town Hall, 4540 South County Trail, Charlestown, Rhode Island.

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

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

Pre-roll

Everyone present will attend the November 16, 2010 meeting.

Minutes

The minutes of the September 21, 2010 meeting were approved as corrected.

Mr. Rzewuski called the first petition.

Petition #1186 Helen E. Daly

Appealing the decision of the Building Official dated June 25, 2010 under Article IV, Section 218-28 and Article VI, Section 218-33B contiguous substandard lots in an R2A Zone. Premises located at Bay View Road, Charlestown and is further designated as Lot 280-1 on Assessor's Map 2.

A letter was received from Thomas Liguori, Attorney for the applicant, requesting continuance to November 16, 2010.

Mr. Crosson moved that the petition be continued to November 16, 2010.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO NOVEMBER 16, 2010.

Mr. Rzewuski called the second petition.

Petition #1187 Arline and Tamara Duker

Appealing the decision of the Building Official dated June 25, 2010 under Article IV, Section 218-28 and Article VI, Section 218-33 contiguous substandard lots in an R2A Zone. Premises located at 26 Bay View Road, Charlestown and is further designated as Lot 280 on Assessor's Map 2.

A letter was received from Vincent Naccarato, attorney for the applicant, requesting a continuance to November 16, 2010.

Mr. Crosson moved that the petition be continued to November 16, 2010.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO NOVEMBER 16, 2010.

Mr. Rzewuski called the third petition.

Petition #1189 Margaret A. Laurence for H. Jane Pierce Trust

Appealing the decision of the Building Official dated August 9, 2010 under Article IV, Section 218-25 Contiguous Substandard Lots in an R2A Zone. Premises located at East Arnolda Drive, Charlestown and is further designated as Map 12; Lot 45-1.

An e-mail was received from Margaret A. Laurence, attorney for the applicant, requesting continuance to November 16, 2010.

Mr. Matuza stated that continuance will allow time for Ms. Laurence to meet with him and further research and review the history of the subject property.

Mr. Crosson moved that the petition be continued to November 16, 2010.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO NOVEMBER 16, 2010

Mr. Rzewuski called the fourth petition.

Petition #1193 Margaret L. Hogan for Thomas and Sharon Frost

Requesting a Dimensional Variance under Article VII, Section 218-43, 218-41 Dimensional Table seeking relief from a restriction imposed in a prior Zoning decision to allow a residential use of original existing farm cottage in an R3A Zone. Premises located at 45 Sunset Drive, Charlestown and is further designated as Lot 627 on Assessor's Map 2.

Margaret L. Hogan, attorney for the applicant explained that the relief was from a condition imposed by this board in a prior application.

There ensued discussion on the history property and the law relative to relief from stipulations imposed previously.

Thomas Frost was sworn and gave a history of their ownership of the property. The deed for the property was entertained as exhibit #1. He testified that it was their original intent to live in the main house and delay renovation of the farm cottage until money and time allowed. He entered a series of photos of the main house, kitchen sink and bath tub as exhibit #2. The property tax card was entered as exhibit #3, the current tax card as exhibit #4, a letter dated April 6, 2009 from the Town's Onsite Wastwater Specialist relative to cesspool phase-out and replacement as exhibit #5, the DEM records of the approval of a new system for the subject property as exhibit #6, and a photo of a Hotpoint electric stove as exhibit #7.

There ensued discussion.

Mr. Frost explained a letter and discussion that he had with the Building Official, the original zoning application and the restriction imposed. The subject building needs some serious work and it has always been their plan to utilize the farm cottage for family members, when they visit.

Mr. Matuza stated that prior to the early '90's, zoning decisions were not recorded. There was a house, barn and a couple of out buildings in the early '70's. The zoning decision of August 1986 was for a height variance. In December of 1986 there was a stipulation that the farm house would be used for storage only. In December of 1986, the owners took out a permit for the main house and the building permit had a note, "existing dwelling not to be occupied". June 10th of that year, before the zoning decision, there was a building permit issued to reside the dwelling but there was a note that it would be for storage. October of 2005, Mr. Frost received an approval from DEM to go from a 03 to 4 bedroom system. The letter from Wastwater is a form letter to replace all cesspools. The old septic system approval from DEM when the main house was built in 1987 included a note that the old farm house would be removed. The new approval to replace the cesspool for the farm house with a new system does not include the main house on the plan. He feels that the tax cards are for tax purposes only and gives no zoning rights no matter what they say. The Assessor taxes what he sees. On the Tax cards from the early '80's is a note that the building is for storage only. The value of the farm house went from \$29,600 to \$9,500 in 1987 and there was a check mark that it was due to a Zoning Board decision. The current tax card does have the property as multi-family. A two family is not allowed currently on this property unless there is a reason to have 2 dwellings on one lot. From the photos it is evident that no work has been done on the subject building. The only permits issued since 2000 were for the shed on the property and repairs to the main house.

Mr. Rzewuski asked Mr. Craven if this is the place to resolve this question.

Mr. Craven stated that the applicant can apply for relief from this Board of the prior decision, if it can be found that it is sufficiently different from the original request that there is a change in circumstances.

There ensued discussion on the type of variance necessary and how it should be treated.

Mr. Frank asked the size of the lot.

Mr. Matuza stated 2.84 acres.

Ms. Hogan stated that there is a fundamental difference between an applicant who comes before the board, receives approval with conditions and comes back at a later time seeking relief from those conditions. In this situation, a buyer purchases property based on a title search of the records and the tax cards indicating that there are 2 dwellings.

Also, an inspection shows 2 dwellings on the lot.

There ensued discussion.

Mr. Dreczko asked if this type of restriction would come up on any petitions heard after the early '90's.

Ms. Hogan said it would. The Zoning decisions have been recorded in the Land Evidence Records since the early '90's.

There ensued discussion.

Mr. Dreczko asked if the main house and the farm cottage had their own septic systems.

Mr. Frost stated that the main house has its own system and the farm cottage cesspool was replaced with a new system.

Ms. Hogan stated that there is an exemption of disclosure in the case of an estate or trust.

This property transferred from a trust.

There ensued discussion.

Mr. Dreczko asked if the building, as an accessory structure, could be used for sleeping area in conjunction with the main house, without having a kitchen as an independent living unit.

Mr. Matuza stated that his determination, under the existing zoning ordinance, is that a detached structure can have living space. He added that this issue may not have been a question in 1986 because the building may not have been habitable. The 1986 application listed the use of that structure as storage and the proposed use as single family dwelling. That may be why the question of 2 dwellings on lot did not come up.

There ensued discussion.

Mr. Dreczko asked if there was mention that this building would be demolished.

Mr. Matuza stated that that is a note on the septic design plan as approved by the State for the main house, that this building would be demolished.

Mr. Frost testified that there was a tiny summer house building that was demolished to build what is now the main house. The farm cottage was there.

There ensued discussion.

Mr. Dreczko asked why the Building Official at the time would issue a CO if the building that was to be removed had not been torn down.

Mr. Matuza stated that because that stipulation was on the septic approval, the issue would have been between the applicant and DEM. As for the building permit, the farm cottage was to be used for storage.

Ms. Hogan stated that a new septic system had been installed for the farm cottage. There ensued discussion.

Mr. Craven suggested that the septic system approval and the former zoning file be made part of this file as the Town's exhibit. There ensued discussion.

Mr. Matuza marked the zoning file as Town's exhibit A, the 1986 DEM septic system approval as exhibit B and the 10-5-05 septic approval as exhibit C. There ensued discussion.

Mr. Dreczko asked if there was an objection to using the subject structure as an accessory structure as opposed to a full residence.

Ms. Hogan stated that the applicant would like the full use and enjoyment of the structure. There ensued discussion.

Ms. Hogan submitted a photo of a stove that has been restored and was in the farm cottage.

There ensued discussion.

Ms. Hogan suggested that because the Town sent a letter that the cesspool be replaced, it was a pre-existing dwelling and system.

There ensued discussion.

Mr. Crosson asked if he would have replaced the cesspool with a septic system, if he knew that the use of this structure would be a problem.

Mr. Frost stated that he would not. It was always their intent to restore the structure.

Mr. Rzewuski asked how many cesspools were on the property.

Mr. Frost stated there was one for this structure. The main house was build with a septic system. He currently uses the old cesspool for a drain field.

There ensued discussion.

Mr. Frost stated that there were two farms on two parcels that were put together and the land was divided into ten lots with frontage on West Beach Road and ran to Quonochontaug Pond.

Mr. Matuza added that the septic approval states that the old cesspool will be pumped and backfilled with bank run gravel. He asked Mr. Frost if he backfilled it.

Mr. Frost stated that there is stone in it.

Mr. Matuza stated it was a DEM stipulation.

There ensued discussion.

Ms. Hogan submitted as exhibit #8 a letter of support from the Charlestown Historical Society and read same.

The Board received letters of support of the application from Peter and Jodi Gaffey and Ronald and Barbara Ruel.

Mr. Dreczko stated that based on the information submitted, the subject building is supposed to be used solely for storage. Because the cesspool has been replaced, he asked Mr. Frost if he would accept an accessory structure with habitable space in it or would he only accept a second dwelling on one property.

Mr. Rzewuski reminded the board that two houses on one lot were prohibited. There ensued discussion.

Elaine Battista of 35 Surfside Avenue was sworn and as a friend of Tom and Sharon Frost wanted to support their request. She feels that this cottage should be restored. It adds history and charm to Quonnie, which is something that is gradually slipping away. She didn't understand the prior stipulation of 1986.

Randy Johnson of 56 Sunset Drive was sworn and visited the house when the Frosts first purchased the property. It would be a shame to ignore the rich history of the area and farm community.

Peter Gaffey of 14 Bay View Road was sworn and knows the Frosts original intent. It is not their intent to rent the property, but to use it for family. They had absolutely no way of knowing of the stipulation from years ago.

Patricia Gamwell was sworn, stated that they purchased their property in 1992. She was always told that the building would only be used for storage.

Mr. Crosson asked if there were no cooking facilities in the building, would she feel better.

Ms. Gamwell asked the Board to put themselves in her place. She doesn't want a whole bunch of people in the back yard. She is concerned about the future.

Barry Bowman of 39 Sunset Drive was sworn and spoke in opposition to the petition. He knew the Wilsons who were members of the church and assured them that they would open up North Sunset Drive and that there would be no problem with that because they would see that the drive was taken care of. He gave his military background and family history. The building was supposed to be torn down when the main house was built. He asked Mr. Matuza if he had received a request for a permit to work on the interior of the house.

Mr. Matuza stated that there was a permit issued for the shed in 2005. All other permits were issued in 1998 and 1999 to construct additions on the house.

Mr. Bowman stated that there was work on the house all summer. There ensued discussion.

Mr. Bowman stated that everyone needs to take responsibility for their actions, especially if they proceed without permits. To increase the number of people using this property, would be too close.

Mr. Crosson asked if there were no kitchen facilities, would he be as opposed.

Mr. Bowman stated that he was opposed to it being used as a habitable building. It should be a history project for restoration purposes.

Mr. Dreczko stated that the testimony was that it adds to the neighborhood and adds to the history of the neighborhood and that particular farm, the charm and restoration of the building. From this point forward, assuming the application is approved in some form, would the applicant be opposed to a restriction. Although this applicant may be well intentioned, there is nothing stopping the next owner from knocking the building down and putting something else there.

There ensued discussion.

Ms. Hogan stated that the applicant is an innocent third party purchaser, who purchased a property with two dwellings on it, with no indication that it could not be used as such. The applicants had always intended to restore the building. She proposed findings of fact and conclusions of law and asked that the applicant be granted the lifting of the previous condition. The applicant realizes that the Board would be inclined to approve an accessory use only and she would leave that to the Board's discretion.

There ensued discussion.

Ms. Hogan stated that they would agree to a condition of an accessory scope of residential use, as is currently permitted by the Zoning Ordinance.

There ensued discussion.

Mr. Craven explained the meaning of the term "Deed Restriction". The Board should, if they grant a request, record the decision, which is now required by the State Law.

There ensued discussion.

Mr. Dreczko stated that the argument was to preserve the history of this building, not to remove this structure and build another building with the footprint.

Ms. Hogan added that based on the hearing and in accepting an accessory structure, they would like the same privileges of any accessory structure such as a deck or any other right.

There ensued further 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. Crosson moved that the public hearing be reopened.

Mr. Frank seconded the motion.

THE BOARD UNANIMOUSLY REOPENED THE PUBLIC HEARING.

Ms. Hogan suggested that the application asks the Board to lift the prior restriction that limits the structure to be used only for storage. If that motion were made the Board would be free to make a motion as to what level of residential use would be permitted. There ensued further discussion.

Mr. Rzewuski called the fifth petition.

Petition # 1194 Richard A. Greene, PLS for New Castle Realty Co.

Requesting a Special Use Permit and Dimensional Variance under Article VII, Section 218-41 Dimensional Table, Article VII, Section 218-43 A(2) and Article XIII, Section 218-78 to construct a Single Family Dwelling closer to property lines and associated OWTS closer to a wetland than allowed in an R3A Zone. Premises located at Shannock Road, Charlestown and is further designated as Lot 51 on Assessor's Map 29.

Richard A. Greene requested continuance to the next meeting.

Mr. Crosson moved that the petition be continued to November 16, 2010.

Mr. Meyer seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO NOVEMBER 16, 2010.

The Board resumed file #1193 Thomas and Sharon Frost

Ms. Hogan recapped the evening and asked that the Board continue the matter to the November meeting so the members would have time to consider this unusual request. The Frost's could remove the farm house and request a permit for a new structure with no review by the Board, as a matter of right. It is only because of an old stipulation that they are here tonight. It would be unfortunate if the applicant felt compelled to remove the structure.

There ensued extensive discussion.

Mr. Frank 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 #1193 Margaret L. Hogan for Thomas and Sharon Frost requesting a Dimensional Variance under Article VII, Section 218-43, 218-41 Dimensional Table seeking relief from a restriction imposed in a prior Zoning decision to allow a residential use of the original existing farm cottage in an R3A Zone be approved as modified to lift the restriction on the subject building "for storage only" and allow it to become an accessory structure as defined in our Zoning regulations 218-43.

Premises located at 45 Sunset Drive, Charlestown and is further designated as Lot 627 on Assessor's Map 2.

Mr. Crosson seconded the motion seconded the motion.

The Board felt that with respect to this building, lifting the restriction of storage only, that we have referred to this evening as the back building and allow it as an accessory structure use as defined in 218-43, it is my opinion the hardship that the applicant seeks relief from is due to a few things. The definitions set forth in 1986, or thereabouts, aren't those that are in place today. In my opinion it is reasonable to surmise that at the time you could have one of two structures. A storage accessory unit or a primary residence. Since then, zoning has grown to allow an accessory structure to have habitable space without being a dwelling. Being confined with restrictions such as not having a kitchen in said structure. The building in general meets all of today's zoning, with the exception of the restriction that was put in place when the primary residence was constructed and appears to be used as some kind of collateral to get relief for the cupola that was constructed at that time. The hardship either way certainly is not the result of any prior action of the current applicant sitting here before us this evening and it is my opinion that it would be the least relief necessary and not contrary to the public interest and welfare.

Mr. Rzewuski voted to deny the application based on the motion that was made. I am in full agreement of removing the restriction and an accessory habitable structure as allowed by the Charlestown Zoning Ordinance. However, based on the application as presented, the applicant and the Charlestown Historical Society wanted to maintain the original building and its footprint, which is why I wanted to maintain the existing footprint and that they would have to come back to this Board to expand the footprint in the future. Granted, they had every right to remove the building, but if that is the case, why come before us with this application. This is why I vote to deny the motion as presented. Also, the neighbors testified that the original intent was for storage only. I was more than willing to meet the applicant half way, but the motion was made to allow a full accessory use.

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

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

Adjournment

There being no further business, the meeting adjourned at 10:45 PM.