

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, September 15, 2009 at 7:00 PM at the Charlestown Town Hall, 4540 South County Trail, Charlestown, Rhode Island.

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

Also present were, Robert Craven, Asst. Solicitor, John J. Matuza, Building Official, and Caroline Dion, Stenographer.

Minutes

The minutes of the August 18, 2009 meeting were approved as written.

Pre-roll

Everyone present will attend the October 20, 2009.

Mr. Rzewuski called the first petition.

Continuation of petition #1133 Omnipoint Communications, Inc. for Leroy and Joan M. Grinnell

Requesting a Use Variance and Dimensional Variance under IV, Section 218-26 to install a Telecommunication Tower in a C2 Zone. Premises located at 3964 South County Trail, Charlestown and is further designated as Lot 43-6 on Assessor's Map 29.

There was a letter from Mark Cook of T Mobile northeast requesting continuance of 60 days to investigate alternatives.

There ensued discussion on denial of the application without prejudice and that the applicant reapply when they have explored all other options and are ready to proceed.

Mr. Crosson moved that the petition be continued to October 20, 2009 with the stipulation that if they are not prepared to go forward, the application will be withdrawn without prejudice.

Mr. Frank seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE APPLICATION TO OCTOBER 20, 2009 WITH THE STIPULATION THAT IF THEY ARE NOT PREPARED TO GO FORWARD, THE APPLICATION WILL BE WITHDRAWN WITHOUT PREJUDICE.

Mr. Rzewuski stated that the second and third petitions are requesting continuance to October 20, 2009.

Continuation of petition #1145 Cox TMI Wireless, LLC for SBA Properties, Inc.

Requesting a Special Use Permit under Article XV, Section 218-105 B (1)(a) to install antennas and ancillary equipment on and next to the existing tower in an R3A Zone. Premises located at 5081 Old Post Road, Charlestown and is further designated as Lot 103 on Assessor's Map 14.

Petition #1147 Cox TMI Wireless, LLC for SBA Properties, Inc.

Requesting a Special Use Permit under Article XV, Section 218-105 B (1)(a) to install antennas and ancillary equipment on and next to the existing tower in an R3A Zone. Premises located at 5081 Old Post Road, Charlestown and is further designated as Lot 103 on Assessor's Map 14.

There ensued discussion on multiple continuances.

Mr. Crosson moved that the petition be continued to October 20, 2009.
Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED BOTH PETITIONS TO OCTOBER 20, 2009.

Mr. Rzewuski called the fourth petition.

Petition #1152 Margaret L. Hogan for Louis A. Calamari

Requesting a Dimensional Variance under Article VI, Section 218-33 A2 Table of Dimensional Regulations to construct additions closer to property lines than allowed in an R2A Zone. Premises located at 170 Midland Road, Charlestown and is further designated as Lot 429 on Assessor's Map 2.

A letter was read from Margaret Hogan, attorney for the applicant asking for a 60 day continuance.

Mr. Dreczko moved that the petition be continued to November 17, 2009.
Mr. Crosson seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO NOVEMBER 17, 2009.

Mr. Rzewuski called the fifth petition.

Petition #1148 Richard Lavigne for Shelter Cove Properties, LLC

Requesting a Special Use Permit under Article XV, Section 218-95, District Use Table to expand a marina from 53 to 66 slips in a C2 Zone. Premises located at 523 Charlestown Beach Road, Charlestown and is further designated as Lot 131 on Assessor's Map 9.

Rick Lavigne and Dan Szymanski project manager and engineer with Northeast Engineers were sworn, gave the history of the property and explained the petition and the need for additional spaces.

There ensued discussion.

Mr. Rzewuski asked if there had been a traffic study.

Mr. Lavigne stated that they had not done one, but could if the Board requested it.

Peter Moran was sworn and stated his objection to further expansion that could affect the traffic generated and the safety hazard. He is concerned with possible spillage from gas tanks brought to the property as well as added parking and trash along the side of the road.

Mr. Rzewuski stated that the Board would need expert testimony with statistics of fuel spillage.

Mr. Moran stated that he was guesstimating.

There ensued discussion.

Mr. Dreczko questioned the percentage of parking that was for the marina and the beach.

Mr. Lavigne stated that during the week the average of 5-6 cars for the beach. On a busy weekend with 12-14 cars for the marina, beach parking another 25-30. The property could park 300 cars.

Mr. Crosson asked about the parking along the side of the road.

Mr. Lavigne stated that he has only seen his customers pull over, pick up something and get back in their vehicle and go. He has never seen parking along the side of the road.

There ensued discussion of parking for the marina and beach parking apart from this application.

Mr. Lavigne explained that he has never seen more than 25% of his customers at any one time.

There ensued discussion on the use.

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 #1148 Richard Lavigne for Shelter Cove Properties, LLC requesting a Special Use Permit under Article XV, Section 218-95, District Use Table to expand a marina from 53 to 66 slips in a C2 Zone approved. Premises located at 523 Charlestown Beach Road, Charlestown and is further designated as Lot 131 on Assessor's Map 9.

Mr. Crosson seconded the motion.

The Board felt that the testimony relative to 218-25A has been met. As stated, the applicant, over the years of owning the property, in an effort to be a good neighbor, has done some improvements and addressed concerns for the neighborhood. Not to discount Mr. Moran's concerns, but it is unfortunate the problems he referred to are police concerns and if there was going to be a bigger problem, I would think that there would be a larger turnout with those concerns. With respect to the traffic, I don't believe that there will be any measurable difference with 3 more vehicles, unless they are tractor trailers, which I don't believe it will be. Sewage and waste disposal into the ground and the surface water drainage from the proposed use will be handled on site. Being a good neighbor, I don't think he will disrupt the neighborhood or the privacy of any of the abutting property owners by excessive noise, light, glare or air pollutants. That the requested special use permit will not alter the character of the surrounding area or impair the intent or purpose of this ordinance or the Comprehensive Plan upon which this ordinance is based. He has slips there now. He is adding a few more slips. They are all small boats and I am satisfied that he met all the criteria. The public welfare and convenience will be substantially served. It will not result in adverse impact or create conditions that will be inimical to the public health, safety, morals or general welfare of the community. The requested relief will not pose a threat to drinking water supplies. The applicant has shown that they are sensitive to the neighbors and their needs by redirecting a light, when it was brought to their attention. The traffic from the proposed use will not cause any undue congestion or introduce a traffic hazard to the circulation pattern of the area, since all of the parking is off street. The applicant has satisfied the attributes as an expert on his own property.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the sixth petition.

Continuation of petition #1149 Steve Zimmerman

Requesting a Dimensional Variance under Article VI, Section 218-32, Table 32.1 Dimensional Regulations to enlarge an existing deck closer to property lines than allowed in an R20 Zone. Premises located at 60 East Shore Drive, Charlestown and is further designated as Lot 357 on Assessor's Map 11.

Susan Lee was sworn and explained the survey.

Mr. Rzewuski asked the distance to property lines from the proposed stairs.

Ms. Lee stated that it was not on the plan because it was hard to measure when the stairs are not there.

Mr. Rzewuski asked if there were any changes made to the plan as the board requested.

Ms. Lee stated that they were making the same request. The stairs can be moved, if necessary. Its location is for esthetics. The property is shared by two brothers and their families. The existing deck is not large enough.

Mr. Rzewuski read the burden of proof for a Dimensional Variance from the ordinance and asked Ms. Lee if she understood what she had to prove.

There ensued discussion.

Mr. Dreczko asked the setback requirement to the side.

Mr. Matuza stated that based on the lot size, the setback would be 20 feet.

Mr. Dreczko asked if they could move stairs so that they were no closer to the front line than the existing deck.

Ms. Lee stated that the space on the deck is of greater importance.

There ensued additional discussion.

Mr. Rzewuski asked if they could make the stairs smaller and have more usable deck.

Ms. Lee explained the reasoning for the design.

Mr. Rzewuski stated that there would be more usable space on the deck if the stairs are smaller.

There ensued discussion.

There were no objectors present.

Mr. Dreczko asked Mr. Matuza if the revision of the stairs needed to amend.

Mr. Matuza stated that Ms. Lee would amend the application.

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 #1149 Steve Zimmerman requesting a Dimensional Variance under Article VI, Section 218-32, Table 32.1 Dimensional Regulations to enlarge an existing deck closer to property lines than allowed in an R20 Zone be approved with the stipulation that the proposed stairs be either eliminated or moved beyond the existing 7.1' setback from East Shore Drive. Premises located at 60 East Shore Drive, Charlestown and is further designated as Lot 357 on Assessor's Map 11.

Mr. Northup seconded the motion.

The Board felt that the applicant is willing to move or eliminate the proposed angled stairs to the waterside of the property, so that the proposed deck is no closer to East Shore Drive than the existing deck, which based on the surveyor's map, by Mr. McCormick,

leaves that at 7.1' from East Shore Drive and makes it the least variance necessary and not contrary to the public interest and welfare. The applicant testified that they needed a larger footprint deck to accommodate the family for general use as well as enjoyment of the water and to be able to utilize it for furniture and seating arrangements. When asked about changing some of the other stair layouts, consideration by me includes the fact that there are windows that do allow daylight and ventilation into the lower level of the home, which was testimony showed is either a family room or a living room. .

Mr. Matuza clarified that the stairs would be moved to the right side and will be no closer than the 7.1' and will be anywhere on that side.

Mr. Dreczko continued that it would be anywhere on the right side, as long as they do not encroach on the 7.1' to the side of the home. The relief to be granted is the least relief necessary and not contrary to the public interest and welfare.

Mr. Rzewuski voted to deny the application in its entirety. They essentially testified that they want the added space for pleasure and convenience and that is not a hardship as far as the Zoning Ordinance is concerned. Therefore, it is not showing anything even close to the least relief necessary or show denying the request will amount to more than a mere inconvenience. Said property, even with the existing amount of deck space would still allow them to enjoy said property. Even then, it would still be questionable whether it would meet the criteria for least relief necessary. The applicant was specifically asked to seriously consider coming back with a revised smaller deck to show the least relief necessary and more than a mere inconvenience. The request was totally ignored and was well understood by Mr. Lee at the first hearing. Based on the testimony, there was no hardship shown. It was only for pleasure and convenience, which is not a hardship under the Zoning Ordinance for the Town of Charlestown and the State of Rhode Island.

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

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

Mr. Rzewuski called the seventh petition.

Petition #1150 PZ Realty LLC

Requesting a Special Use Permit under Article XV, Section 218-87 to construct a single family dwelling with associated OWTS in a V Flood Zone in an R2A Zoning District. Premises located at Kennedy Lane, Charlestown and is further designated as Lot 157 on Assessor's Map 4.

Donald Packer, attorney for the applicant, gave a history of the property and explained the relief sought.

William Dowdell, Civil Engineer was sworn and gave his background.

Mr. Packer entered the septic system approval as exhibit #1, Mr. Dowdell's report as exhibit #2 and the site plan as exhibit #3.

Mr. Dowdell explained the proposal and the history of the OWTS permitting process and design. The OWTS can not be located on this lot where it is not in a flood zone. There are no zoning variances sought as part of this application.

Mr. Rzewuski asked Mr. Dowdell how he determined the direction of groundwater flow. Mr. Dowdell stated that he used the topography, existing contours and the proximity to the pond, the groundwater would flow 90% at all times. There is about 125 feet between the system and wetland, so any effluent would be filtered by the fringe wetland before it reaches the pond. It was his opinion that it would not affect the wetland or pond. There ensued discussion.

Warren Lutzel was sworn and asked Mr. Dowdell about the septic system design and type and the release of nitrates into the pond.

Mr. Dowdell explained that the system has been through 2 years of testing.

Grayce Anderson was sworn asked if this system would affect their well.

Mr. Dowdell stated that the proposed system is approximately 1,000 feet from any well in the area and across a huge wetland. The State standard for safe safety is 100 feet.

Ms. Anderson asked if the fresh water stream would be affected.

Mr. Dowdell stated the stream is on the plan and about 900 feet from the system.

Mr. Packer made closing arguments.

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 #1150 PZ Realty LLC requesting a Special Use Permit under Article XV, Section 218-87 to construct a single family dwelling with associated OWTS in a V Flood Zone in an R2A Zoning District be approved. Premises located at Kennedy Lane, Charlestown and is further designated as Lot 157 on Assessor's Map 4. Mr. Northup seconded the motion.

The Board felt that the applicant has demonstrated that the system is a little bit better than the average Advantex system that we are accustomed to. I think that the granting of this Special Use permit will not pose a threat to drinking water supplies, that the use will not disrupt the neighborhood or the privacy of landowners by excessive noise, glare or air pollutants. That the sewage and waste disposal into the ground and the surface water drainage from the proposed use will be adequately handled on site. All the attributes of section 218-87 C 1-13 have been met and based on testimony it is cleaner than the traditional system and will protect the surrounding area drinking water supplies and so forth. Mr. Packer and Dowdell testified that this new system is one of the first to utilize this design and will more than handle treatment of the this property and will not affect the wetlands in the area.

VOTE: Crosson – aye Northup – aye Dreczko – aye Crosson – aye Rzewuski – aye

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the eighth petition.

Petition #1151 Robert and June Bryant

Requesting a Dimensional Variance under Article VI, Section 218-33 A2 to construct an addition closer to property lines than allowed in an R2A Zone. Premises located at 48 Upper Highland Road, Charlestown and is further designated as Lot 322 on Assessor's Map 2.

Paul Larson, Architect for the applicant, was sworn and explained the proposed design and the need for a screened porch. He further reviewed the design. He reviewed other designs that were considered by the owner. He entered photos of the property.

There ensued discussion.

There were no objectors present.

June Bryant was sworn and explained the existing stairs.

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. Crosson moved that petition #1151 Robert and June Bryant requesting a Dimensional Variance under Article VI, Section 218-33 A2 to construct an addition closer to property lines than allowed in an R2A Zone be approved. Premises located at 48 Upper Highland Road, Charlestown and is further designated as Lot 322 on Assessor's Map 2.

Mr. Dreczko seconded the motion.

The Board felt that the granting of the requested variance will not alter the character of the surrounding area or impair the intent or purpose of this ordinance and that the relief to be granted is the least relief necessary and not contrary to the public interest and welfare. The request for a screened in porch is going over an existing deck and is therefore not encroaching on any more of the footprint than what is already there. The additional space for the deck is a reasonable amount of area which leads to her stairs, which from the pictures, I wouldn't be surprised if the steepness of them lead to some of the leg problems that she had. The new design would also contribute to safety for people to get out of the house in an emergency, but also to the back yard to enjoy the property. I think that the proposal clearly falls under the criteria of least relief necessary and as stated the original deck was not constructed by variance. They have met the requirements for a dimensional variance.

VOTE: Crosson – aye Dreczko – aye Northup – aye Frank – aye Rzewuski – aye

THE PETITION WAS GRANTED UNANIMOUSLY.

Discussion among members

Mr. Rzewuski pointed out that the meeting scheduled for September 22nd to hear any petitions not heard tonight will not be needed.

Adjournment

There being no further business, the meeting adjourned at 10:00 PM.