

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

The Charlestown Zoning Board of Review held a regular open meeting on Monday, April 26, 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, Alt. #1

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 May 18, 2010 everyone.

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 sent a request that the petition be continued to the next meeting due to a family emergency.

Mr. Dreczko moved that the petition be continued to May 18, 2010.

Mr. Meyer seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE HEARING TO MAY 18, 2010.

Mr. Rzewuski called the second petition.

**Continuation of 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 submitted a series of 6 photos as Exhibit #4 with a written explanation of the differences between the pole designs. If another monopole were constructed on this site, it would be about 70' away. There ensued discussion.

Mr. Dreczko asked the distance between the pole and the dwelling and why they can't meet the minimum setback.

Mr. Pare stated that it would impact the location of the owner's house, when it is built. They moved the tower back on the lot to minimize the impact on the abutters.

Mr. Matuza asked about the internally mounted antenna and if another carrier might need another tower.

Mr. Pare stated that the proposed tower could handle 5-6 carriers. He is not sure if every carrier can use internal equipment.

There ensued discussion.

Patricia Vohr, owner of the property was sworn and testified they plan to build a 2400 square foot house on the property for their son. The engineering has not been completed.

Mr. Rzewuski asked if they realizes that it could be a property value issue.

Mrs. Vohr said that they do not expect that it will, but they are aware.

Mark Cook, site acquisition specialist was sworn. He has been involved with site acquisition for most if not all major carriers in northeast. He explained the choice of this site. He approached the Nature Conservancy, but received no response. This location offers low visibility in the area.

Mr. Pare stated that Mr. Cook's site exploration report was filed with the application.

There are no available towers for collocation in the search area that meet the requirements.

Mr. Northup asked about the water tower at Kenyon Mill.

Mr. Cook stated that it would not serve this search area and that Kenyon Mill is not interested in working with them for coverage of their area.

Mr. Rzewuski asked about the number of carriers relative to the tower height.

There ensued discussion.

Mr. Dreczko questioned the balloon debris from another installation.

Mr. Pare stated the balloon debris will be cleaned up. He entered a plan for a no cut zone that the Vohrs have agreed with as exhibit 5, reviewed and explained same.

Mr. Dreczko asked the difference in elevation between the railroad and the Vohr property.

Mr. Cook stated that there is no ledge abutting this site. This parcel has many more trees and shrubs than the brown pole photo submitted and the proposed compound is much smaller.

Mr. Pare feels that the proposed location of the tower makes a lot of sense, there is a fair amount of screening and reserved the right to make closing arguments.

Mr. Rzewuski asked Mr. Matuza if they could maintain the 225' fall zone to the house. Mr. Matuza stated that they cannot get 225' to all property lines. Anyone who builds on the property would know the pole is there.

There ensued discussion.

Mr. Dreczko asked Mr. Bardsley about an access easement.

Mr. Bardsley stated that they have a barn on lot 92-1. They know the tower will go up, but would prefer not within striking distance of his house.

There ensued discussion on the use of the existing cart path.

Ruth Platner, Planning Commission Chair was sworn explained their site plan review. They would prefer access from the cart path but because they have not worked out an easement with Mr. Burdick, could not require it.

Mr. Rzewuski asked if they would have to go back to planning.

Ms. Platner stated that they would be back for final approval but the Planner will do that. The cart path is a less obtrusive way to access the sight and the commission liked internally mounted equipment. They do agree the Nature Conservancy land provides considerable screen.

There ensued discussion.

Catherine Orr, owner of lot 18 stated that they can see the balloon. If allowed, she would hope it would be enclosed so she can't see it and entered photos of the balloon as objector's A & B.

There ensued discussion on designs for the pole.

Mr. Pare stated that the tree design is a monopole and has externally mounted antenna with the fiberglass needles and referred to pictures provided by the Town Planner for the Planning Commission. They do provide some interference but could work.

There ensued discussion on use of the cart path and pole designs.

Mr. Matuza reminded the Board that the application was for a cell tower and location, not the driveway. If the access is changed, the application would go back to Planning for site plan review. Planning prefers the use of Old Depot Road, if possible.

There ensued discussion.

Mr. Dreczko asked if the gate to the facility would be at Edwards Lane or could it be set off the road.

Mr. Pare stated that the facility would be gated at the compound itself.

There were no objectors present.

Mr. Meyer moved close public hearing.

Mr. Dreczko seconded the motion.

**THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.**

There ensue discussion.

Mr. Dreczko moved that petition #1174 T-Mobile for Fred and Patricia Vohr requesting a Special Use Permit under Article IV, Section 218-26 and Article XV, Section 218-105 to construct and operate a Wireless Telecommunication Facility in an R3A Zone be approved. The applicant has provided us with the data and facts to support the criteria under Section 218-105 and has met all the criteria under Section 218-25. It was stated for the record that public welfare and convenience will be substantially served by giving more coverage in the area for, not only the residents in town, but also those passengers on the railway. It will not result in any adverse impact or create conditions that will be inimical to the public health, safety, morals and general welfare of the community. It will not alter the general character of the surrounding area or impair the intent or purpose of the Zoning Ordinance. The fact that it will be shielded with vegetation and a buffer as submitted on NC-1 and the fact that the preserve is across the way from the railway supports that. It will not pose a threat to drinking water supplies at the tower. It will not disrupt the neighborhood or the privacy of landowners by excessive noise, light, glare or air pollutants. It was stated that there would not be any high powered lighting that will affect the neighbors. Traffic would be minimal, plus or minus once a month to check the equipment on site. The sewage and waste disposal into the ground and surface water drainage from the proposed use will be adequately handled on site. The traffic that would be generated would be minimal, based on maintenance and upkeep. Premises located at 51 Edwards Lane, Charlestown and is further designated as Lot 19-1 on Assessor's Map 24.

Mr. Meyer seconded the motion.

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

THE SPECIAL USE PERMIT PORTION OF THE PETITION WAS GRANTED UNANIMOUSLY.

There ensued discussion on the Dimensional Variance portion of the petition.

Mr. Dreczko moved that petition #1174 T-Mobile for Fred and Patricia Vohr requesting a 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 be approved with the following understandings and contingencies: The debris from a previously flown site be cleaned up, that the pole be built to the 150' proposed height but with the capability of being expanded to the 170' as well as handling a total of six (6) co-locators in the future and that the pole is constructed to collapse on itself plus or minus on the midpoint. In the event that after researching and making sure that there is no way of utilizing the cart path and Old Depot Road, noted on the information supplied, the approval would be for the tower to be constructed on site where stated and presented. If, in researching further and finding out that the cart path and Old Depot Road can be used, the pole would be moved southeasterly toward the railroad side of the property, within 80' of said line and that, in doing so, trying to maintain 25' from the easterly property line and trying to gain as much footage from the westerly property line. The gate to secure this facility will be located closest to the tower,

not along the roadway of Edwards Lane. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure, is not the result of any prior action of the applicant. It will not alter the general character of the surrounding area or impair the intent or purpose of the ordinance and would be the least relief necessary and not contrary to the public interest and welfare. The pole, when first constructed, would be a monopole with a tight array of antennas, referencing picture 4C, the center of the pole showing a similarity of what would be setup from the onset where there would be a platform with two antennas on three sides, but having the ability to be expanded to have 3 antennas on each side. Premises located at 51 Edwards Lane, Charlestown and is further designated as Lot 19-1 on Assessor's Map 24.

Mr. Meyer seconded the motion adding specifically referencing Section 218-105 which talks about 1.5' for every 1' of height. It is located so that if the pole does fall, it will not harm anyone or anyone's buildings at the present time. I would also like to say that maybe to add to Mr. Dreczko's request, that a reasonable and not exhaustive land record search into Old Depot Road because I really don't want to tie up this thing forever...I who determines that, I don't know.

Mr. Rzewuski voted to approve with the findings of fact as stated by Mr. Dreczko the board discussing...the greater...the discussion period of this application, after the closing of the public hearing. I would also like to add that Mr. Pare and company were very positive in their presentation and very welcomed and very well to work with than other previous cell tower presenters have been in the past.

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

THE VARIANCE PORTION OF THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the third petition.

**Petition #1173 Philip W. and Jane Moreschi**

Requesting a Dimensional Variance under Article VI, Section 218-32D to construct and addition and tool shed closer to property lines than allowed in an R20 Zone. Premises located at 93 Willow Road, Charlestown and is further designated as Lot 108 on Assessor's Map 13.

Philip W. Moreschi was sworn and explained the requested relief. He presented a 3 page presentation to explain the proposal. He reviewed Sheet 1 of 4 and presented a series of 5 photos to show the deck and proposed. He reviewed the proposed shed location. There ensued discussion on the location of the shed.

Mr. Moreschi submitted a cover letter with letters of support from Aldo Addario Sr., John J. and Jeanne Rush and Anne Mulhall in favor of the petition. There ensued discussion of alternate locations.

Mr. Dreczko asked how he determined the size of the shed.

Mr. Moreschi stated that it is the one that they like and need to have indoor storage. The do not have a full basement.

Mr. Dreczko asked if they could build one 10'x18' or 8'x16'.  
Mr. Moreschi stated that the impact is the same.  
Mr. Dreczko stated that he was looking for the least relief necessary.

There ensued discussion of turning the shed for some distance to the property line.

Mr. Moreschi stated that his property abuts a narrow strip of land that is unusable and the property owner supports proposal. Moving the shed further from the property line will be an inconvenience and take a large portion of the back yard.

There ensued further discussion.  
Mr. Meyer suggested that he buy a strip of land from neighbor to the rear.  
Mr. Rzewuski referred to pages 24 and 27, of a book titled "*zoning for non-lawyers*". He stated that he feels that the applicant is creating his own hardship.  
Mr. Moreschi stated that he would agree to an 8'x16' shed, 4.5' off rear line.  
There ensued discussion.

Mr. Dreczko moved that the public hearing be closed.  
Mr. Northup seconded the motion.

**THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.**

There ensued discussion.

Mr. Dreczko moved that petition #1173 Philip W. and Jane Moreschi, requesting a Dimensional Variance under Article VI, Section 218-32D to construct a deck addition closer to property lines than allowed in an R20 Zone be approved. Premises located at 93 Willow Road, Charlestown and is further designated as Lot 108 on Assessor's Map 13. The applicant has proven a need for the stairs to come off the rear of the deck. It doesn't encroach on the back yard any more than the existing bulkhead does. The hardship from which the applicant seeks relief is due to the unique characteristics of this property and home. It won't change the general character of the surrounding area and it would be the least relief necessary and not contrary to the public interest and welfare of the community.  
Mr. Northup seconded the motion.

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

**THE VARIANCE FOR THE DECK WAS APPROVED UNANIMOUSLY.**

There ensued discussion on the shed.

Mr. Dreczko moved to approve the variance for the shed in accordance with the amended site plan. The applicant has agreed to reduce the footprint of the shed from a 12'x20' to 8'x16', keeping the front of the shed off the rear setback so as to give a rear setback of 4.5', requiring a 5.5' variance. The applicant has proven to my satisfaction the need for a shed to store his furniture, bicycles, lawn mowers, etcetera in the back yard.

I believe that the space is needed. He testified that he had kayaks and other equipment in the basement with limited space in the existing structure and if he didn't have that or if it was simply his want and lack of desire to carry things down into the basement, I believe we would have seen pictures of kayaks and other things laying out in the back yard, as well, and that wasn't the case. The fact that he needs additional space, the fact that he was willing to modify the footprint and the fact that his three immediate abutters in favor of this application, leads me to approve the shed portion of the variance. Mr. Northup seconded the motion.

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

Mr. Meyer voted to deny the shed portion of the application because the hardship is not more than a mere inconvenience. I think there are other avenues that the applicant can take in seeking a remedy. He would have a remedy if he moved the shed on the property to be in conformity with the Zoning Regulations.

Mr. Rzewuski voted to deny the application because the applicant has not proven that it is more than a mere inconvenience with the location of the shed. He has not shown the least relief necessary. He has made concessions but not the least relief necessary. He still wants to have more use of the property and the shed too. He can't have both. He did show need for a shed but would be creating his own hardship.

THE SHED PORTION OF THE PETITION WAS DENIED WITH THREE (3) AYES AND TWO (2) NAYS.

Mr. Rzewuski called the fourth petition.

**Petition #1175 Margaret L. Hogan, Esq. for Gerald G. Jr. and Sherri L. St. Hilaire**

Requesting a Dimensional Variance under Article IV, Section 218-26 and 218-33 (S)(A)(2) to construct additions closer to property lines than allowed in an R20 Zone. Premises located at 19 Fourth Street, Charlestown and is further designated as Lot 377 on Assessor's Map 9.

Margaret L. Hogan, attorney for the applicant explained the relief sought. The revised site plan, reducing the requested relief was entered as exhibit #1. The deck would meet the 12' setback to the side with no relief. There would be 24' to the rear PL as proposed.

Gerald St.Hiaire Jr. was sworn and gave a history of his ownership of the lot. He entered floor plans of all 3 stories as exhibit #2 that shows that the deck could not be constructed and have access from the house, in compliance with the ordinance. It could not be located over the sand filter and a deck on grade would invite mosquitoes.

They reviewed the reasons for the side walkway.

The neighbors are in favor of the request, except for the Barnicles and the requested relief has been minimized to address their concerns.

There ensued discussion.

Mr. St.Hilaire stated that a slider to the deck from the bedroom would not be acceptable. They are open to a 3' deck plus handrail.

Peter and Lauren Barnicle sent a letter of objection that was received by the Board and a copy is in the file.

There ensued discussion on the elevation of the home and the location of the proposed walkway.

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 moved that petition #1175 Margaret L. Hogan, Esq. for Gerald G. Jr. and Sherri L. St. Hilaire requesting a Dimensional Variance under Article IV, Section 218-26 and 218-33 (S)(A)(2) to construct additions closer to property lines than allowed in an R20 Zone be approved as amended. The side setback would be a requested amount of 8'6", relief sought being 3'6" and, just a correction, a mathematical error for the rear, 38', requested 24, relief sought 14'. It is reasonable that the applicant is seeking a means of exit from the home living space level out to the deck. It would not be reasonable to ask him to put that exit in either the mechanical room or the master bedroom. There doesn't seem to be any other reasonable area to put a means of egress to enjoy the deck in the back. It would certainly be unreasonable to ask him to go outside and walk up a set of stairs and again do the same to get back into the house. The hardship from which he seeks relief is due to the unique characteristics of the subject land and the positioning of the house on the land. It is not the result of any prior action of the applicant, it will not alter the general character of the surrounding area, or impair the intent or purpose of the ordinance and it would be the least relief necessary and not contrary to the public interest and welfare. Premises located at 19 Fourth Street, Charlestown and is further designated as Lot 377 on Assessor's Map 9.

Mr. Northup seconded the motion.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

### *Discussion among members*

Mr. Matuza explained tolling of zoning approvals, until June 30, 2011. He reviewed the letter from Statewide Planning and has made the decision that any approval after November 11, 2009 will be effective until June 30, 2011, at which time the 1 year period will start. The law will change to clarify this language, but that is his interpretation of the law at this point.



Mr. Dreczko stated that he was not pleased that the Board was not notified by the Town Council that it would discuss the possibility of appealing the Holmes case so that the Board could participate in the discussion.

Mr. Matuza stated that the Council had made the decision to appeal, which takes the decision out of the Board's hands.

Mr. Craven explained how the Council voted to appeal, based on the judge's reasons to overturn.

There ensued discussion.

Mr. Craven stated that the Board may want to suggest that Mr. DiLibero ask the League of Cities and Towns to intervene.

### **Adjournment**

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