

**TOWN OF CHARLESTOWN
ZONING BOARD OF REVIEW SITTING AS THE PLATTING BOARD OF
REVIEW AND APPEALS
MINUTES**

The Charlestown Zoning Board of Review sitting as the Platting Board of Review and Appeals held a regular open meeting on Monday, June 29, 2009 about 7:00 PM at the Charlestown Town Hall, 4540 South County Trail, Charlestown, Rhode Island.

Members present: Michael Rzewuski
Ronald Crosson
Raymond Dreczko
Casey Hibbard
William Meyer
Scott Northup, Alt. #2
David Provancha, Alt. #3

Also present were Robert Craven, Assistant Solicitor, Caroline Dion, Stenographer.

Mr. Rzewuski stated that the Board had met in Executive Session and no votes were taken.

Public Hearings

Mr. Rzewuski called the petition.

Petition #1140 Charlestown Fire District

Appealing under Article VIII, Section 218-42A(2) the decision of the Planning Commission on April 29, 2009 to deny the Development Plan Review for the Cross Mills' Fire Station, a permitted use in a Traditional Village and Historic Village District with a Mixed Use Overlay. Property located on Old Post Road, Charlestown and is further described as Assessor's Map 12, Lot No. 13-1 and 13-2.

Ms. Mulholland explained the history of the case and that the use is permitted in a TVD and mixed use overlay district. The fire district is a quasi municipality for the protection of the community. She reviewed the existing fire station and its history as a volunteer organization. In August 2006 the taxpayers voted to approve exploration of the use and construction of a new station. A feasibility study determined the existing station and site are not sufficient to build a new station. They found the site on which the proposed station is located and designed a building large enough to accommodate trucks and associated equipment. The comprehensive plan states that the Town wants to continue to support the volunteer fire department. Moving the fire station to another part of town would affect fire insurance rates for a large portion of the community. There is need for training the volunteer firefighters within the building, for their equipment and their meetings. The Historic District regulations list preferred materials, including brick.

Brick is one of the oldest building materials available. She reminded the Board that a fire station is not a commercial but public building. They chose a design that has projecting and recessed areas, plantings and landscaping as the regulations require. The Planning Commission preferred multiple buildings which does not work well for a Fire Station. The existing station has been added on to and is not adequate for the newer trucks and equipment. The proposal will maximize space to allow firefighters to get where need to go and construct a building with minimum maintenance, because the volunteers do most of the maintenance. This is not a typical commercial development or subdivision, it has a unique purpose and is a hub of community activity and this tradition should be continued.

Richard S. Lawrence, Architect for the applicant was sworn, gave his education and experience background, the considerations of the design and size of the proposed building. He reviewed other buildings designed by the firm. He evaluated the needs of the Fire Department for vehicles and equipment.

Mr. Rzewuski asked for a copy of his resume. The Board would recognize him as an expert pending a copy of his resume.

Mr. Lawrence explained the collective efforts of several engineers over a considerable period of time to design a plan to best serve the community and the volunteers. His firm primarily designs fire and school buildings. He reviewed several of those buildings. The height is needed to retract 14' overhead doors. The original proposal was for a larger building. The revision reduced the size of the building and included dormers to break up the roof line as requested by Planning Commission. He reviewed the architecture of the proposed building. They could reduce the overall height with a flat roof, but it would not be in keeping with the neighborhood. The regulations prefer a pitched roof and the proposed design keeps the height with the 35' maximum height of the regulations. At Dr. Johnson's request, they proposed a lighter brick and reduced the amount of brick to 28% of exterior surface. He showed the board samples of the brick as presented to the Planning Commission.

Clohesey Hale tried to interject her opinion.

Mr. Rzewuski stated that the assistant solicitor advised the board that this is an appeal and would include only testimony by the appellant as to the how the Planning Commission made an error and the Planning Commission defending their decision.

Ms. Hale objected to being prevented from speaking as did an unidentified gentleman. Both left the meeting.

Mr. Lawrence explained the floor plan and the multi purpose space and the standards by the JLN Associates report. The Planning Commission treated the massing of the building as a commercial building rather than a municipal building.

Mr. Rzewuski asked for copies of that report.

There ensued discussion on the many changes made by the Fire District.

Mr. Crosson asked if the building would serve as an emergency shelter.

Mr. Lawrence stated that it will have an emergency generator for hurricane but had no special rooms for that purpose or a commercial kitchen but it could be used for that.

The Planning Commission was critical of bulk and massing stating that it is 2-3 times larger than necessary. There is a need to house modern equipment. They considered reducing the roof pitch but it would be contrary to the intent. Multiple buildings would add to heat loss, utility bills and delayed response time and thereby the safety of the community. He compared the proposed Fire Station to other buildings in the TVD and added that Fire Station #1 is 48' high, needed a variance and was approved by the Planning Commission. He reviewed the street skapes and the building across the street which is 6' higher than Post Road and approximately as high as the proposed Fire Station.

Mr. Crosson asked if brick was used more than wood for safety reasons.

Mr. Lawrence stated brick would be safer.

Mr. Dreczko stated he had read the minutes of the Planning Commission meetings where they were asked to use green products.

Mr. Lawrence stated that they were proposing green products. With the brick veneer they would have a 3-5% more energy efficient building than with other material.

There ensued discussion on the concessions that the applicant had made based on the Planning Commission's requests.

Mr. Meyer asked about the parking and if reducing the number of parking spaces would be a good idea.

Mr. Lawrence stated the original plan showed 36 spaces and the Planning Commission asked them to reduce parking and lighting.

Mr. Crosson asked the rational for their request.

Mr. Lawrence stated it was esthetics.

There ensued discussion.

Roberta Mulholland felt that there would be availability to park on the lawn.

Mr. Meyer stated he felt that with the number of volunteers, training at this facility for additional volunteers and the likelihood of overflow parking on the street, made reducing the number of parking spaces poor planning and a safety issue from the beginning.

There ensued discussion.

Mr. Meyer recommended that the number of parking spaces on original plan be constructed.

Mr. Rzewuski stated that with the required handicapped accessibility, it could be used for a polling location.

Ms. Mulholland stated that it is only being proposed as a fire station for equipment and volunteers.

There ensued discussion.

Mr. Lawrence reviewed the lighting reductions as requested by the Planning Commission. He reviewed photos of fire station designs from 11 adjoining communities including historic Wickford showing a mix of materials. They had several conversations with the Planning Commission about brick including choosing one that is less red. He prepared responses to their requests for the April meeting but the Commission only talked among themselves and voted unanimously to deny the plan.

Ms. Mulholland referred to the Planning Commission decision and stated that it appeared by their comments that the Commission ignored the fact that the use is allowed in this district.

There ensued discussion of other possible properties.

Mr. Provanha asked the width of doors.

Mr. Lawrence stated 14'x14' which is reduced slightly by the arch.

John Carter, Landscape Architect was sworn and gave his education background.

Mr. Rzewuski agreed to qualify him as an expert witness, conditioned on receiving his resume.

Mr. Carter reviewed the changes to the plantings and the view of building from Old Post Road. He reviewed the existing vegetation, which will remain and act as a screen. The Planning Commission asked that the vegetation be naturalized and not manicured. All plants will self maintained and mowed on an annual basis to minim invasive plants.

Mr. Meyer asked if they could use a mat for parking.

There ensued discussion on adequate parking and visibility from the site.

Mr. Rzewuski asked if there would be traffic lights.

Ms. Mulholland stated that it was the sole discretion of DOT. She made closing arguments and stated that to remove the fire station will increase insurance rates.

Peter Ruggiero, attorney for the Planning Commission explained the decision. Safety was never an issue. The applicant was asked to make the building as small as possible and still serve their needs. There was discussion about brick and the Commission feels that it is not appropriate in a TVD Zone. The Planning Commission has one view and the applicant has another. They were not able to get by that. He asked the Board to look at the last plan, which was the closest it could but did not get there because other things got in the way, like landscaping, building layout, parking, the access. Those issues were negotiated and the applicant agreed to them. They relented, they believed at this time it would be adequate and that was the plan that they last presented. They couldn't make the building any smaller. They didn't want to the change the bricks. It was never the Planning Commission's decision in its written letter that said that hardy board couldn't be used. If you literally read the Zoning Ordinance as written as to materials, these hardy or concrete boards are not mentioned. Yet the Planning Commission didn't deny it for that reason. The Planning Commission wanted a better building, as they saw it. The Planning Commission as a group never said that brick was wrong for a fire station, it was wrong for a fire station at this location. That is a key factor. It is not about what other fire stations look like, it is the one that fits best in the TVD and Historic District at Cross Mills. The Planning Commission had a different vision based on their application of the Comprehensive Plan and Zoning Ordinance than the applicant did. He asked that the Board sustain the Planning Commission's decision. He added that if the Board saw fit to overturn the Planning Commission that they consider the plan that was finally submitted to them, if it is remanded for action as the one that the Commission ought to consider, not the first plan.

There ensued discussion.

Mr. Crosson stated that this is all about compromise and the fire district did, numerous times. One of the Planning Commission's suggested sites would add valuable response time, which is crucial.

Mr. Meyer stated that with the heavy population in the area, this would be an ideal location for an emergency facility.

Mr. Rzewuski added that the use is allowed in this district.

Mr. Ruggiero stated that the Planning Commission felt that the building that the fire district needs is neither the size nor design appropriate to this district.

Mr. Crosson stated that it appeared that the fire district had done everything they could to appease the Planning Commission with design, parking, lighting, materials and landscaping. It still wasn't enough.

Mr. Ruggiero stated that no one would dispute that. They did a good job addressing the questions presented. They ultimately could not satisfy the issues raised.

Mr. Meyer stated that many historic districts have fire departments right behind the Town Hall.

Mr. Ruggiero stated that that observation was made to the commissioners and they did not agree that it was the right setting for this location.

Mr. Rzewuski stated that the Comprehensive Plan is contradictory document. There ensued discussion.

Mr. Ruggiero stated that the Board has to weigh all evidence in their decision. The Planning Commission had great difficulty with this application but realized that the Fire Department did everything they could.

There ensued discussion on building design.

Mr. Ruggiero stated that the TVD district only talks about residential and commercial uses and not municipal. There is no standard to apply for this kind of use, but it is only one element of the overall plan and by self would not change their decision.

Donald Rathbone, Charlestown Fire Chief was sworn.

Mr. Meyer asked if he felt that they had compromised too much.

Mr. Rathbone stated he didn't think so. They tried to consider the future so they wouldn't need to build additions and make changes in a few years. After the preapplication meeting, they revised the plan to a smaller version. If in the future there becomes a need to have some paid firefighters, there needs to be room to accommodate them. There is room for expansion into some of the proposed spaces for the future, but anything any smaller would not function for a fire department. There is no public water and the tanker holds 2700 gallons. The existing equipment would fill proposed building without the addition of any more equipment. A building that is any smaller would prompt the need for a 3rd fire station and would be fiscally irresponsible.

There ensued discussion.

Mr. Craven told the Board that it has 10 days to render decision.

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. Meyer moved reopen public hearing.

Mr. Craven seconded the motion.

THE BOARD UNANIMOUSLY REOPENED THE PUBLIC HEARING.

Mr. Rzewuski asked if the applicant has all of the required state approvals.

Mr. Ruggiero stated there no evidence that the have OWTS approval or PAP approval for access to the property.

Mr. Rzewuski asked if that was the main reason for denial.

Mr. Ruggiero stated no. It was not a reason to deny. Normally, if the application is approved, those would be conditions of the approval. The real issue is whether or not they can use a smaller building. The applicant's testimony is that they can not. You can't second guess the Architect.

Mr. Crosson moved to close the public hearing.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Dreczko moved that petition #1140 Charlestown Fire District appealing under Article VIII, Section 218-42A(2) the decision of the Planning Commission on April 29, 2009 to deny the Development Plan Review for the Cross Mills' Fire Station, a permitted use in a Traditional Village and Historic Village District with a Mixed Use Overlay be reversed and remanded to the Planning Commission for approval and final disposition at the stage in the process where the appeal was taken. Premises located at Old Post Road, Charlestown and is further designated as Lots 13-1 and 13-2 on Assessor's Map 12
Mr. Crosson seconded the motion.

The Board felt that there was prejudice for the proposal to use brick, which is a natural product and allowed in a TVD zone as stated in 218-43 C (2)(n)(1.)(g) and would fall under prejudicial procedural error. The fact that the building as proposed is less than 10,000 square feet, and does have jogs in the building so as not to be large, massive and bulky looking falls under Section 218-43A6, and would also fall under prejudicial procedural error. The building in general is a permitted use in a TVD zone. The statement by the Planning Commission that the land is a choice piece of property and would be better suited for something other than a fire station would fall under prejudicial procedural error, as well clear error. The fact that the building is an allowed use in the TVD Zone falls under District Use Table 218 Attachment 1-3 and also can be found as a use not prohibited in that area under 218-35 2. Finally, that lack of support by the weight of the evidence in the record was clearly demonstrated. The 2008 Comprehensive Plan does support fire stations and volunteer firefighters, which adds to the lack of support by the weight of the evidence.

Mr. Crosson seconded the motion.

VOTE: Dreczko – aye Crosson – aye Meyer – aye Hibbard – aye Rzewuski – aye

THE PETITION WAS REVERSED AND REMANDED TO THE PLANNING COMMISSION FOR APPROVAL AND FINAL DISPOSITION AT THE STAGE IN THE PROCESS WHERE THE APPEAL WAS TAKEN.

Adjournment

There being no further business, the meeting adjourned at 11:10 PM.