

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, November 17, 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
William Meyer
Richard Frank
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 October 20, 2009 meeting were approved as written.

Pre-roll

Everyone present will attend the December 15, 2009 except Mr. Crosson.

Mr. Rzewuski called the first petition.

Petition #1158 Michael W. Gunter

Requesting a Dimensional Variance under Article VI, Section 218-32 to construction additions closer to property lines than allowed in an R20 Zone. Premises located at 61 Traymore Street, Charlestown and is further designated as Lot 338 on Assessor's Map 11.

Mr. Dewey Gunter was sworn and stated that his father did not meet the notice requirement and asked for continuance.

Mr. Dreczko moved that the petition be continued to December 15, 2009 with new notice to the abutters.

Mr. Crosson seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO DECEMBER 15, 2009 WITH NEW NOTICE TO THE ABUTTERS.

Mr. Rzewuski called the second 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.

Mr. Rzewuski stated that this petition was continued to consider other locations. Simon Brigenti, Attorney for T-Molile North East explained the petition and prior evidence.

Mark Cook, was sworn and explained his exploration of alternatives, stated that they considered other towers in the area. Unfortunately, there was no agreement to consider collocation.

There ensued discussion on other possible methods of gaining coverage.

Mr. Cook stated that utility poles are 30-34' high surrounded by trees that are much higher than the poles.

There ensued discussion.

Mr. Meyer asked if the tower would have any exterior antenna.

Mr. Cook stated that they would all be housed within the pole which will be 18 to 34 inches in diameter, painted grey.

There ensued discussion on the signal from a uni-pole.

Mr. Meyer asked if the antenna were on the exterior of the pole, would it allow for fewer poles.

Mr. Dreczko asked if they had considered property along the railroad tracks.

Mr. Cook stated that they had, but there was not enough room for safety to have a pole along the Amtrak right away.

Scott Heffernan was sworn, stated that the material used would not hamper the signal. It does, however, limit expansion in the future. He went on to explain the decibel level.

Mr. Crosson asked about the pole.

Mr. Heffernan stated that a taller structure is needed to get over the terrain of the area.

There ensued discussion.

Mr. Dreczko asked how far south the tower could be before the signal would be degraded to the point not valuable.

Mr. Heffernan stated ½-¾ miles.

There ensued further discussion.

Mr. Dreczko asked if National Grid would allow installation of a unipole.

Mr. Cook stated no because it was not far enough from power lines.

Mr. Brigenti showed photos of unipoles used as flag poles in other locations. There ensued discussion.

Mr. Rzewuski asked if the coverage was intended for customers in vehicles or trains. The coverage gap map showed the location along the Amtrak.

Mr. Heffernan stated the intent is for coverage for residences, mobile customers and Amtrak customers. He reviewed coverage issues that they are trying to cover. There ensued further discussion.

Mr. Cook added that the tower would be available to other carriers.

Mr. Dreczko asked if there would be scrambled or dropped calls if this pole were constructed.

Mr. Cook stated yes, but they need to start somewhere to close the gap. There ensued further discussion on the pole design.

Mr. Brigenti explained that the utility will not allow wood poles, even if the ordinance allows.

Mr. Dreczko asked if that was general policy or specific to this site.

Mr. Cook stated that it is the policy of National Grid not to replace a wood pole with another wood pole, but requires a steel mesh tower.

There ensued further discussion.

Mr. Dreczko asked if they had a conversation with Noel Rowe since last meeting.

Mr. Cook stated that the transmission lines that run through the Rowe property is a bit too southerly to be effective.

Mr. Brigenti summarized the gap in service and that building towers are a last resort after considering collocating on other towers.

Mr. Dreczko asked the height of poles in the area.

Mr. Cook stated 50'.

Mr. Dreczko stated that the Board had considered a prior application by National Grid and knows that they are higher.

Debbie Pirhonan was sworn and entered photos that were taken when the balloon was flying. She stated that they should have an additional 220' of fall zone to protect the neighboring property. She asked if they were offered other locations in the search area to locate a tower.

Mr. Cook stated the tower was a collapsing design. As for other alternative locations, Map 29; lot 40 is too far south west of the search area. Map 29; lot 50 is too southerly. Other properties were considered but were not viable options.

Ms. Pirhonan asked if there were other options.

Mr. Cook stated that discussion of other properties were terminated by the property owner.

There ensued discussion.

Mr. Crosson stated he would like to see the use of wood poles vs. a tower.

Mr. Brigenti stated National Grid does not allow.
There ensued discussion.

Ms. Pirhonan stated that the people who will benefit will not be taxpayers. The setbacks are designed to protect the neighborhood. She asked that the petition be denied.

Mr. Crosson asked if the pole will be designed to be collapsible with the antenna inside the pole.

Mr. Cook confirmed that that was correct.

Mr. Crosson moved that the public hearing be closed.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

Mr. Rzewuski referred to a publication entitled “RI Zoning for Non-lawyers” and read the requirements for granting a use variance.

Mr. Craven explained the origin of the publication.

There ensued discussion.

Mr. Dreczko moved that 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 be denied. Premises located at 3964 South County Trail, Charlestown and is further designated as Lot 43-6 on Assessor’s Map 29.

Mr. Crosson seconded the motion.

The Board voted to deny the petition based on the testimony which is a lot of generalization with regard to surrounding properties specifically with respect to National Grid. Upon questioning, Mr. Cook did not have the actual height of the poles within the National Grid corridor. He believed them to be 50 feet. Based on the fact that they came to us within the last few years and poles on my own property have been extended, I am confident that they are taller than that. On top of that and as was stated earlier, I don’t believe that the burden for the use variance has been satisfied. Mr. Grinnell does have a commercial use of his property. He certainly has not shown any hardship stating that the existing use is a financial loss to him. The existing ordinance prohibits this use on that piece of property and the fall zone would not be met on that property on three sides to protect the neighbors. If they were so thorough, when they started the presentation, they would have testified that they had looked at the utility poles as an alternative and found that it would not meet their needs. It should have been automatically included as part of the opening testimony and we should not have had to ask for that information. They did not provide testimony for the use variance portion of the application because this use is prohibited in a C2 Zone. The applicant was surprised that this use is allowed in residential zones and not commercial. Ruth Platner of the Planning Commission testified that residential areas would be safer for meeting fall zone and safety requirements and more plentiful than commercial zones.

Mr. Meyer voted to approve the application because the applicant demonstrated that there is a need for the greater public in the greater community to improve its communications and also for other potential users. I think they have demonstrated that they technically and diligently went about their business and came up with a solid use of the property.

VOTE: Dreczko – deny Crosson – deny Frank – deny Meyer – approve Rzewuski - deny

THE PETITION WAS DENIED WITH 4 CONCURRING VOTES.

Mr. Rzewuski called the third petition.

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.

Margaret Hogan, Attorney for the applicant asked for continuance to the December meeting to address concerns of a neighbor. At that time, they may ask for an additional continuance.

There ensued discussion.

Mr. Crosson moved that the petition be continued to January 19, 2010.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO JANUARY 19, 2010.

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.

Margaret Hogan, attorney for the applicant, explained the relief sought. The proposed sunroom will be no closer to the property lines than the existing first floor deck.

Louis A. Calamari was sworn and explained the use of the property as identified in 5 photos that were entered as exhibit #1A-E.

There ensued discussion.

Mr. Dreczko asked if the deck and stairs were there when he purchased the house.

Mr. Calamari stated that it was.

There ensued discussion on the three season room on the existing deck and building another deck.

Mr. Meyer asked why not on the rear of the property.
Mr. Calamari septic system is on the back.

The Board received a letter of support from Susan and Robert McIntyre.
There were no objectors present.
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 #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 be approved. Premises located at 170 Midland Road, Charlestown and is further designated as Lot 429 on Assessor's Map 2.
Mr. Crosson seconded the motion.

The Board felt that as stated by Ms. Hogan, it is for overall use of property. The fact that there are times of day and times of the year that there are mosquitoes and other nuisances would force you to go inside. In this case a screened porch does not necessitate all decks having to be screened in. I did ask the applicant if he had constructed the deck after purchasing the home. He stated that it was already there. Therefore the hardship was not caused by him and it is not a situation where they came before the Board for a variance to build a deck and is now back to enclose it and want a second bite of the apple. Based on these reasons, the hardship is due to the unique character of the subject property and would be the least relief necessary and not contrary to the public interest and welfare. I would also add with respect to the second floor deck, if nothing else, it would be no different than putting a rubberized flat roof over the porch and using it as a deck as opposed to stating that that is what they intend to use it for. The requested relief is not the result of the desire of the applicant to realize greater financial gain. It is the least relief necessary and not contrary to the public interest and welfare.

Mr. Rzewuski voted to deny the application. The hardship for enclosing the first floor deck for mosquitoes and then construct a second floor open deck and mosquitoes can go there anyway. To a mosquito it doesn't matter how large or small a deck area is. There are inconsistencies as far as hardship. Not having an open deck will not be more than a mere inconvenience. He will still be allowed to enjoy said property in the closed in area on the existing deck. Therefore it is not the least relief necessary.

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

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

Mr. Rzewuski called the fifth petition.

Petition #1153 Margaret L. Hogan for Anita DeRosa

Requesting a Special Use Permit and Dimensional Variance under Article IV, Section 218-26, 218-25 and 218-33(f) Table of Dimensional Regulations to construct additions to a non-conforming use closer to property lines than allowed in a C3 Zone. Premises located at 5127 Old Post Road, Charlestown and is further designated as Lot 95 on Assessor's Map 14.

Margaret Hogan, attorney for the applicant, explained the relief sought. She submitted a series of photos as exhibit #1A-F. A special use permit is required for expansion of this residence in a commercial zone. She explained the size and location of the decks and presented as exhibit #2.

There ensued discussion.

Mr. Dreczko asked the hardship for an 8'x8' deck rather than a landing and stairs. Ms. Hogan stated that she needs a place for a gas grill and some privacy. The front faces route #1. She added that they could eliminate the set of steps closest to the property line.

Forrester Safford spoke in favor of the application. He would have asked for a larger deck and feels the property values have improved with the improvements to this property.

There were no objectors present.

Mr. Crosson moved that the public hearing be closed.

Mr. Meyer seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Meyer moved that petition #1153 Margaret L. Hogan for Anita DeRosa requesting a Special Use Permit under Article IV, Section 218-25 and 218-33(f) to construct additions to a non-conforming use closer to property lines than allowed in a C3 Zone be approved. Premises located at 5127 Old Post Road, Charlestown and is further designated as Lot 95 on Assessor's Map 14.

Mr. Crosson seconded the motion.

The Board felt that 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 and general welfare of the community. Granting of the special use permit will not pose a threat to drinking water. The use will not disturb the neighborhood, in fact it will improve the privacy of the abutting neighbors, which there are none. It will not affect the privacy of abutting landowners with excessive noise, light, glare or air pollutants. This request is because it is a residential use in a Commercial Zone. The residence has been there for a number of years and the property was rezoned commercial. They are proposing the removal of dangerous front and rear steps and porches.

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

THE SPECIAL USE PERMIT WAS GRANTED UNANIMOUSLY.

Mr. Meyer moved that petition #1153 Margaret L. Hogan for Anita DeRosa requesting a Dimensional Variance under Article IV, Section 218-26, 218-25 and 218-33(f) Table of Dimensional Regulations to construct additions to a non-conforming use closer to property lines than allowed in a C3 Zone be approved. Premises located at 5127 Old Post Road, Charlestown and is further designated as Lot 95 on Assessor's Map 14.

Mr. Crosson seconded the motion.

The Board felt that granting the requested relief will not alter the general character of the surrounding area or impair the intent or purpose of the ordinance. The request is for the least relief necessary and not contrary to the public interest and welfare. The Variance, as amended, the stairs on the left as viewed from Old Post Road will be removed making the relief the least relief necessary and the actual setback will be forwarded to the Town as soon as possible.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the sixth petition.

Petition #1154 Margaret L. Hogan for Stephen W. Hoff

Requesting a Dimensional Variance under Article IV, Section 218-26 Table of Dimensional Regulations to construct a new two bedroom single family home and maintain the current unheated cottage as an accessory structure with two bedrooms in an R2A Zone. Premises located at 23 Old West Beach Road, Charlestown and is further designated as Lot 199 on Assessor's Map 2.

Margaret Hogan, attorney for the applicant, explained the history of the property and relief sought.

There ensued discussion.

Mr. Rzewuski asked if this is an accessory family dwelling.

Ms. Hogan stated that an Accessory Family Dwelling Unit is attached to the principle structure and has a kitchen. This building does not have a kitchen. The use is permitted and the application is before the Board for a dimensional variance for height and side setback.

Margaret Hoff was sworn, gave the history of the property and the interior of the existing structure. She entered a series of interior photos as exhibit #1A-G, 1H-K, 1L, exterior photos as exhibit #2A-F. She also showed the Board copies of 6 old photos of the cottage and surrounding area and entered them as exhibit #3A-F.

There ensued discussion of other historical structures in the area.

Mr. Rzewuski referred to a letter of concern received from Joan L. Lasser M.D. Ms. Hogan stated that they will not connecting the structure to the proposed new home because of building code requirements. She entered photos of the Lasser property as exhibit #4.

Mr. Meyer stated that this is an opportunity to make the building more conforming. Ms. Hogan stated that they will be building the new house with no dimensional relief and they would like to use this building as an accessory structure. To comply, they would have to move the garage and reduce the height to 15', which would change the character of the structure and be more than a mere inconvenience. The Comprehensive Plan calls for preservation of historic structures. The issue is the height of the existing building. There ensued discussion.

Ned Caswell, Realtor, was sworn.

The Board stipulated him an expert and entered his qualifications as exhibit #5.

Mr. Caswell disagreed with Mr. Meyer that the Zoning Ordinance is written to force conformity of older neighborhoods. He reviewed the proposed use and that it will not hurt value of homes in the area.

There ensued discussion.

Mr. Caswell reviewed the footprint of the existing building and the proposed house.

Ms. Hogan stated that the proposed use as an accessory structure with two bedrooms is permitted.

Mr. Matuza stated that it is proposed as accessory to the principle use and that the accessory structure will have no kitchen.

There ensued discussion.

Ms. Hogan stated that the use of the structure is not part of this application. The relief sought is dimensional for height and setback for the garage. The setback for the new house is more than 2 ½ times the required setback.

Letters of support were received from Margaret and Francis McCaffrey and John and Kathy Jeffries.

Tim Pafik was sworn and spoke in favor the petition.

There were no objectors present.

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 #1154 Margaret L. Hogan for Stephen W. Hoff requesting a Dimensional Variance under Article IV, Section 218-26 Table of Dimensional Regulations to construct a new two bedroom single family home and maintain the current unheated cottage as an accessory structure with two bedrooms in an R2A Zone be approved. Premises located at 23 Old West Beach Road, Charlestown and is further designated as Lot 199 on Assessor's Map 2.

Mr. Dreczko seconded the motion.

The Board felt that the hardship is not the result of any prior action of the applicant or owner, and is not the desire of the applicant to realize greater financial gain. Granting of the requested variance will not alter the general character of the surrounding area or impair the intent and purpose of the Zoning Ordinance. The relief is the least relief necessary and not contrary to the public interest and welfare. In the photos submitted, there was one dated August 1942 showing that the garage was already in place with the height of the subject building at 19 feet, which would fit in the neighborhood and any neighborhood as an accessory structure just as well as the primary residence or cottage that it is today, and it has historical value. Although a flat roof is not prohibited, it is certainly a good idea not to have one in this area. We certainly have had plenty of people come back because they have had multiple issues with a flat roof. The hardship is due to the unique characteristics of the subject property. The dimensions and location of the building are preexisting. The only reason for relief is to alter the existing structure by removing kitchen and making it an accessory building only. That building did set the original character of area and is representative of what that area is. The testimony shows more than sufficient evidence to meet the requirements and dimensional changes.

Mr. Meyer voted to deny the application. The hardship from which the applicant seeks relief is not due to the unique character of the subject land and the granting of the requested variance will alter the general character of the surrounding area.

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

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

Mr. Rzewuski called the seventh petition.

Petition #1155 Lorine Foley for Roman and Lydia Klufas

Requesting a Dimensional Variance under Article VI, Section 218-33 A(2) Table 32.1 Dimensional Regulations to construct addition (s) closer to property lines than allowed in an R2A Zone. Premises located at 812 Charlestown Beach Road, Charlestown and is further designated as Lot 46 on Assessor's Map 9.

Lorine Foley, Architect for the applicant, was sworn and explained the petition and the relief sought.

There ensued discussion on upgrade of the septic system.

Mr. Matuza stated that the septic system is not a subject of this application.

There were no objectors present.

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 #1155 Lorine Foley for Roman and Lydia Klufas requesting a Dimensional Variance under Article VI, Section 218-33 A(2) Table 32.1 Dimensional Regulations to construct addition (s) closer to property lines than allowed in an R2A Zone be approved. Premises located at 812 Charlestown Beach Road, Charlestown and is further designated as Lot 46 on Assessor's Map 9. Mr. Dreczko seconded the motion.

The Board felt that the hardship is not the result of any prior action of the owners and does not result primarily from the desire of the applicant to realize greater financial gain. That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this ordinance. The expansion and alterations are staying within the footprint except for the additional landing for the stairs which actually make it more compliant, rather than asking for front and side variances they are only asking for a side setback variance. The requested relief is the least relief necessary and the have met all attributes for a variance.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the eighth petition.

Petition #1157 David and Kathleen Somers

Requesting a Dimensional Variance under Article VI, Section 218-32 A, Table 32.1 Dimensional Regulations to construct additions to an existing single family dwelling closer to property lines than allowed in an R20 Zone. Premises located at 35 Ram Island Road, Charlestown and is further designated as Lot 492 on Assessor's Map 11.

David Somers was sworn and explained the petition.
There ensued discussion.
There were no objectors present.

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 that petition #1157 David and Kathleen Somers requesting a Dimensional Variance under Article VI, Section 218-32 A, Table 32.1 Dimensional Regulations to construct additions to an existing single family dwelling closer to property lines than allowed in an R20 Zone be approved. Premises located at 35 Ram Island Road, Charlestown and is further designated as Lot 492 on Assessor's Map 11. Mr. Crosson seconded the motion

The Board felt that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the result of any prior action of the applicant or owner and does not result primarily from the desire of the applicant to realize greater financial gain. Granting the requested variance will not alter the general characteristics of the surrounding area or impair the intent or purpose of the ordinance. The new chimney is a reasonable request replacing an inadequate chimney. The second floor addition is over the existing footprint, which would fall under the unique characteristics of the subject building. The homeowners, with the help of the Architect, were conscientious enough to add the first floor addition of 499 square feet within setbacks and not pushing the envelope in accordance with the previously stated findings of fact.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Adjournment

There being no further business, the meeting adjourned at 10:30 PM.