

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, October 20, 2009 at 7:00 PM at the Charlestown Town Hall, 4540 South County Trail, Charlestown, Rhode Island.

Members present: Michael Rzewuski
Ronald Crosson
William Meyer
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 September 15, 2009 meeting were approved as written.

Pre-roll

Everyone present will attend the November 17, 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.

Mr. Rzewuski stated that Mr. Dreczko would not be present tonight and was needed for a quorum on this case.

There ensued discussion.

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

Mr. Frank seconded the motion.

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

Mr. Rzewuski called the second petition.

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.

Scott Lacey of Prince, Lobell, Glovsky and Tye explained the revisions received by the board since the last hearing. He reviewed the Planning Commission minutes and their recommendations. The permits are for a monopole and that is what was constructed. He reviewed the results of the civil court case. They propose to co-locate on the existing pole to fill a significant gap in coverage as is Metro PCS in the next application. He explained the difference between a monopole and a stealth pole. There ensued discussion on notification.

Mr. Craven stated that to the issue of proper notice to the abutters was addressed by the Superior and Federal Courts. An order was given, the Planning Commission had given their approval of the site plan, the tower was granted the necessary permits and was built. Tonight's consideration should only be to col-locate equipment on the existing tower.

There ensued discussion.

Fong Lo, frequency engineer, was sworn and testified that the coverage would be one half to one mile.

There ensued discussion on activation of the equipment.

Forrester Safford asked if the original permit included collocation.

Mr. Matuza stated it was for the tower only, but they had to show the need for coverage. He added that the Planning Commission stipulated that there would be only one generator.

There ensued discussion.

Mr. Lacy stated that there was not a generator as part of this application.

There ensued further discussion.

Mr. Crosson moved that the public hearing be closed.

Mr. Northup seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

A letter was read from Raymond Dreczko Jr.

There ensued discussion.

Mr. Crosson moved that 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 be approved. Premises located at 5081 Old Post Road, Charlestown and is further designated as Lot 103 on Assessor's Map 14.

Mr. Meyer seconded the motion.

The Board felt that for all the reasons so noted in Mr. Dreczko's comments. The public convenience and welfare will be substantially served. The use will not disrupt or have adverse impact on the neighborhood or the privacy of abutting land owners by excessive noise, light, glare, or air pollutants. It will not alter the character of the surrounding area. The applicant presented testimony to colocate on an existing tower. He proved that the public welfare and convenience will be substantially served by better cell phone coverage. It will not pose a threat to drinking water. The issues of light, noise and glare have been addressed by the Planning Commission. There will no waste disposal or surface water runoff from this site. The traffic generated by this use will only be to check on the proposed equipment.

VOTE: Crosson – aye Meyer – aye Provanca – aye Northup – aye Rzewuski - aye

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the third petition.

Petition #1147 Metro PCS for Allan and Barrie Hill

Requesting a Special Use Permit under Article XV, Section 218-105 to install 6 antennas on an existing telecommunication tower and up to four (4) cabinets on the ground within the existing fenced area in an R3A Zone. Premises located at 5081 Old Post Road, Charlestown and is further designated as Lot 103 on Assessor's Map 14.

Scott Lacy, attorney for the applicant explained the requested relief and need for coverage.

Mr. Rzewuski asked if the would be inside the existing compound.

Mr. Lacy explained that this carrier is not proposing a backup generator.

There ensued discussion.

Mr. Northup asked about the future transformer shown outside the fenced area.

Mr. Lacy stated that proposal is for Metro PCS to have equipment within the existing fenced area.

There were no objectors.

Mr. Dreczko's letter that was entered in petition #1145 was included by reference.

Mr. Meyer moved that the public hearing be closed.

Mr. Northup seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Meyer moved that petition #1147 Metro PCS for Allan and Barrie Hill requesting a Special Use Permit under Article XV, Section 218-105 to install 6 antennas on an existing telecommunication tower and up to four (4) cabinets on the ground within the existing fenced area in an R3A Zone be approved. Premises located at 5081 Old Post Road, Charlestown and is further designated as Lot 103 on Assessor's Map 14.

Mr. Crosson seconded the motion.

The Board voted to approve the application for the reasons as stated by their legal council that meet all the criteria of a Special Use Permit to collocate on an existing tower.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the fourth petition.

Petition #1153 Richard Wells for Margaret Beach Trustee

Requesting a Dimensional Variance under Article VI, Section 218-33, Table 32.1 remove and replace a single family dwelling closer to property lines than allowed in an R2A Zone. Premises located at 21 Ashaway Colony Lane, Charlestown and is further designated as Lot 12 on Assessor's Map 1.

Donald J. Packer, attorney for the applicant, explained the relief sought to remove the existing house and rebuild it with a second story closer to property lines.

There ensued discussion on the height.

Mr. Matuza explained that if the house has to be 5 or more feet above existing grade, the height can be 35.

Mr. Packer stated that they are not asking for a height variance. The house is the same but that the deck was changing.

There ensued discussion on the size of the deck and if it is the least relief necessary. Thomas Weber, who worked with Joseph Frisella and has applied for an Architect license was sworn and explained the proposed house. He entered the site Plan as exhibit #1, stating that the size is the same as the existing house. He entered the house plans as exhibit #2 and explained same. The existing sand filter OWTS mandated where the house could go and CRMC determined that they did not want the home to be relocated from the existing location. He entered the OWTS approval as exhibit #3 and the CRMC statement of limitations as exhibit #4.

Mr. Rzewuski questioned the decks.

Mr. Weber stated that they were trying to maximize parking and CRMC will not allow parking underneath or behind the structure. The decks are cantilevered so that they can park cars under them and access the house.

There ensued discussion.

Mr. Packer explained that Ashaway Colony Road is a right of way over this lot.

Mr. Rzewuski asked about relocating the stair tower and decks.

Mr. Packer submitted a letter from Wendy and David Kane in favor of the application as exhibit #5.

Mr. Weber stated that stacking the decks breaks up the height while being used to park under and gain access to the house, which is a modest size.

There ensued much discussion on possible redesign of the decks and stairs.

Mr. Weber stated that CRMC will not allow parking in the rear of the house or under the house. The septic system already exists.

There ensued discussion.

Mr. Packer stated that they are being limited by CRMC and the neighbor being minimally impacted wrote a letter in favor of the application. The dimensional variance is more than a mere inconvenience. The architect is trying to comply with the location of septic system and what CRMC will allow. To park in one area, walk around the building and access through another area is more than a mere inconvenience.

Mr. Rzewuski disagreed and explained.

There were no objectors present.

Mr. Packer made closing arguments.

Mr. Crosson moved that the public hearing be closed.

Mr. Frank seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion on revising the deck design.

Mr. Crosson moved to reopen the public hearing.

Mr. Northup seconded the motion.

There ensued further discussion.

Mr. Weber pointed out the location of the septic system. If the stairs are relocated, they will not be able to park a second car.

Mr. Packer reminded the Board that the standard is more than a mere inconvenience. Piers can not be relocated to meet Mr. Rzewuski's design, which will eliminate 1½ parking spaces and there are only 2 to begin with.

There ensued discussion.

Mr. Crosson moved that the public hearing be closed.

Mr. Meyer seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

Mr. Crosson moved that petition #1153 Richard Wells for Margaret Beach Trustee requesting a Dimensional Variance under Article VI, Section 218-33, Table 32.1 remove and replace a single family dwelling closer to property lines than allowed in an R2A Zone be approved. Premises located at 21 Ashaway Colony Lane, Charlestown and is further designated as Lot 12 on Assessor's Map 1.

Mr. Meyer seconded the motion.

The Board felt that the Architect demonstrated that although there are alternatives that could be used, it would create a hardship and be more than a mere inconvenience. The relief to be granted is the least relief necessary and not contrary to the public interest and welfare. The hardship is caused by CRMC not allowing them to move the house back and the relief sought is due to the unique characteristics of the subject land or structure and not the general characteristics of the surrounding neighborhood. The granting of the requested relief will not alter the characteristics of the surrounding area or impair the intent of this ordinance. In granting this variance that the subject land and structure can not yield any beneficial use if it is required to conform to the provision of the ordinance. Elimination of the new decking is more than a mere inconvenience and any changes will cause a hardship.

Mr. Rzewuski voted to disapprove the application. The applicant has not shown total hardship and more than a mere inconvenience as stated in ordinance. I have presented to the applicant an alternative deck and relocation the stairs minimizing the amount of relief necessary. Even a little closer to the septic system and move the cars would minimize the least relief necessary, which is why I vote to deny this application.

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

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

Mr. Rzewuski called the fifth petition.

Petition #1154 Robert J. Lavery

Requesting a Dimensional Variance under Article VI, Section 218-33 A2 to construct additions to an existing single family dwelling closer to property lines than allowed in an R2A Zone. Premises located at 109 Sunset Drive, Charlestown and is further designated as Lot 123 on Assessor's Map 1.

Mr. Lavery was sworn and explained the application. He reviewed the existing foundation of the garage. If the deck met the setback requirements, garage would be unusable. Presented letter from Vera M. Esposito in favor of the application. There ensued discussion.

Mr. Lavery entered photos of the existing house and artist rendering of the proposed house as exhibit #2A & B. there will be no additional square footage of living space. The dormers will add light to the bedrooms on the second floor for added light. There ensued discussion. There were no objectors present.

Mr. Crosson moved that the public hearing be closed.
Mr. Frank seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Meyer moved that petition #1154 Robert J. Lavery requesting a Dimensional Variance under Article VI, Section 218-33 A2 to construct additions to an existing single family dwelling closer to property lines than allowed in an R2A Zone be approved. Premises located at 109 Sunset Drive, Charlestown and is further designated as Lot 123 on Assessor's Map 1.
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 not the general characteristics of the surrounding area, it is not due to the physical or economic disability of the applicant. The hardship is not the result of any prior action by the present owner. It does not result primarily from the desire of the applicant to realize greater financial gain. The hardship suffered by the owner if the variance is not granted amounts to more than a mere inconvenience. Granting the requested relief will not alter the general character surrounding area or impair the intent or purpose of the ordinance and is not contrary to the public interest and welfare. The application seeks the same relief as Petition #1153 but each application should stand on its own merits and the hardship suffered if the dimensional variance is not granted has been met.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Discussion among members

Mr. Craven stated that he would be happy to provide briefs on the Holmes matter before Superior Court and reviewed the status of the case.

Adjournment

There being no further business, the meeting adjourned at 9:15 PM.