

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, July 20, 2010 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  
Scott Northup, Alt. #1  
David Provanca, Alt. #2

Also present were, Kenneth Shea, for the Assistant Solicitor, John J. Matuza, Building Official, Caroline Dion, Court Reporter and Ellen A. Hefler, Clerk.

**Pre-roll**

Everyone present will attend the August 17, 2010.

**Minutes**

The minutes of the June 15, 2010 meetings were approved as written.

Mr. Rzewuski called the first petition.

**Petition #1184 Margaret A. Laurence for Steven and Roseann Padula**

Requesting a Dimensional Variance under Article VI, Section 218-32A, Table 32.1 Dimensional Regulations to construct a shed that will exceed the allowable lot coverage in an R2A Zone. Premises located at 318 East Beach Road, Charlestown and is further designated as Lot 520 on Assessor's Map 2.

A letter was read from Margaret A. Laurence, attorney for the applicants, requesting continuance to the August meeting.

Mr. Crosson moved that the petition be continued to August 17, 2010.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO AUGUST 17, 2010.

Mr. Rzewuski called the second petition.

**Petition #1182 Melinda Witham & Don Stevens**

Requesting a Special Use Permit under Article V, Section 218-26 and Article XV, Section 218-94 to have a private stable with two (2) additional horses for a total of four (4) in an R2A Zone. Premises located at 161A Biscuit City Road, Charlestown and is further designated as Lot 56 on Assessor's Map 29.

Donald Stevens was sworn and explained the application. They have adopted 2 horses and foster animals that have been displaced. He and his wife provide temporary housing for rescued horses and ponies, until they are placed. They do not intend to build any additional buildings and intend and will foster up to 2 additional animals.

Mr. Meyer questioned the lot sizes.

Mr. Stevens stated a total of 5 acres between the two lots they own.

There ensued discussion.

Mr. Matuza explained the history of the use and suggested that Mr. Stevens ask for 2 additional horses. He reviewed the requirements for a private stable.

There ensued discussion.

Mr. Stevens presented a letter of support from Rachel Axelson and Justin Bayles. He reviewed the requirements for the Special Use Permit.

There ensued discussion.

There were no objectors present.

A letters of opposition was submitted by Lucy and Arthur K. Jordan, Jr., and entered in the file.

A letter of support was submitted by Mark D. and Laura L. Briggs and entered in the file.

Mr. Rzewuski received a call from Mrs. Jordan. He instructed her to send a letter to the Board in care of the Building Official. She sent the letter to him and he had it forwarded the other members of the Board.

Mr. Stevens reviewed the uses in the neighborhood.

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 #1182 Melinda Witham & Don Stevens requesting a Special Use Permit under Article V, Section 218-26 and Article XV, Section 218-94 to have a private stable with two (2) additional horses for a total of four (4) in an R2A Zone be approved. Premises located at 161A Biscuit City Road, Charlestown and is further designated as Lot 56 on Assessor's Map 29.

Mr. Crosson seconded the motion.

The Board felt that the applicant has gone through the criteria for a Special Use permit. He has demonstrated that he complies with the requirements. The public convenience and welfare will be substantially served, it will not result adverse impact or create conditions that will be inimical to the public health, safety, morals or general welfare of the community. The granting of the special use permit will not pose a threat to drinking water supplies. The use will not disrupt the neighborhood or the privacy of abutting landowners with excessive noise, light, glare or air pollutants and that the sewage and waste disposal into the ground and the surface water drainage will be adequately handled on site. Mr. Stevens testified that they have enough room to take proper care of the additional 2 horses. There will be no additional traffic generated. They need the special use permit for 2 additional horses so that they will not be abandoned or euthanized.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the third petition.

**Petition #1183 Rollin E. Ladd**

Requesting a Dimensional Variance under Article VI, Section 218-32A, Table 32.1 Dimensional Regulations to construct a breezeway between the existing house and garage closer to property lines than allowed in an R40 Zone. Premises located at 621 Alton Carolina Road, Charlestown and is further designated as Lot 7 on Assessor's Map 24.

Lou Cappuccio, attorney for Rollin Ladd explained that they are seeking to build a breezeway between the existing house and detached garage, both of which predate zoning. They are seeking the variance because his wife has MS and to facilitate her access to and from the garage. If the board is willing to grant the requested relief, they would be willing to assure the Board by signing an agreement that they would not engage in placing an outdoor wood boiler/heater as defined in Article II of the nuisance ordinance.

Mr. Rzewuski asked if Mr. Ladd currently had an OHH.

Mr. Cappuccio stated that he does, but it is not currently in use in accordance with a court decision.

Mr. Rzewuski ask if he would agree to a remove said OHH and not use it in the future. There ensued discussion.

Mr. Cappuccio reiterated that Mr. Ladd would not violate the tenants of Article II.

Mr. Frank asked how long the breezeway would be.

Mr. Ladd was sworn and stated the breezeway will be 30'.

There ensued discussion on the amount of relief sought.

Mr. Meyer pointed out that the only relief sought was for the dimensional relief sought. If the existing garage met the setback requirements there would be no need for a Zoning Variance. The OHH is not the subject of this hearing.

Mr. Dreczko asked why he would not want to stop the roof line 4' from the garage.  
Mr. Ladd stated for wife's access to the house.  
Mr. Matuza suggested that they ask Mr. Cappuccio to stipulate to a condition that there will not be an outdoor hydronic heater inside or outside the garage.  
Mr. Cappuccio stated that, if the board chooses.  
Several members of the Board felt that it is not germane to the case and the relief sought.  
There ensued discussion.

John Winkelman of 625 Alton Carolina Road was sworn and stated that he had his wife oppose the variance because of the OHH issue. He suggested that the Town make him specify the model number and the manufacturer of the unit. OHHs are outlawed in town for lots the size of the Ladd's lot and it is not an agricultural lot. The Board could get a letter from the manufacturer that says that this unit can be used indoors under certain conditions.

Mr. Matuza stated that the OHH will not be allowed inside or outside.  
Mr. Winkelman stated that he wanted that in writing.  
Mr. Crosson stated that the issue of the OHH is off the table.

Mr. Rzewuski asked his objections to the variance for the addition.  
Mr. Winkelman stated that they would insist that the Town demand that stipulation and added that he and Mr. Ladd do not agree as to the location of the property line.  
Mr. Crosson asked if he could be specific to the variance being requested.  
Mr. Winkelman detailed the property line dispute.  
Mr. Crosson stated that concern is not germane to the variance sought and asked if he would address the relief before the Board.  
Mr. Winkelman read Section 218-26 from the ordinance and stated that Mrs. Ladd's MS does not prevent her from working and does not meet the burden of proof.  
Mr. Rzewuski stated that under the medical disabilities act overrides the zoning ordinance.  
There ensued discussion.

Mr. Shea reviewed the Federal ADA requirements and stated that the application is to build a breezeway and suggested that any objection be directed to the addition. He went on to read from the requirements of the Zoning Ordinance.  
Mr. Dreczko stated that if the breezeway were not physically attached to the garage, Mr. Ladd would not need to be here.  
Mr. Winkelman stated that the applicant had not met the burden of proof and continued to read Section 218-26 and disagreed with the ADA.  
There ensued discussion.

Mr. Dreczko stated that the garage predated zoning of any kind and asked what the hardship was for the breezeway as proposed.  
Mr. Winkelman stated that the hardship was having the garage 6' from his property line.  
Mr. Dreczko asked if the garage was there when he purchased the property.  
Mr. Winkelman stated that it was.  
There ensued heated discussion.

Mr. Winkleman stated he could see that he wasn't getting anywhere and that if the Town and John Matuza would make sure there is no wiggle room to put that OHH in the garage that he already and calls it an indoor wood burner somehow and continues with all the pollution, if you can somehow secure that and guarantee that lock tight, there is no way around it, then he guesses he could live with that.

Linda Fabre of 639 Alton Carolina Road was sworn 639 Alton Carolina Road and reiterated the OHH argument. If the Board could guarantee that there is no way that an OHH would be installed here, she could be in favor of a breezeway. She is one of the primary authors of the OHH ordinance. It does not include anything about primary structures or moving an OHH inside. She expects the Board to absolutely make this a condition of approval.

Mr. Dreczko asked Ms. Fabre her definition of an OHH.

Ms. Fabre stated that it is defined in the OHH ordinance and there is no mention of a primary structure. You can't move an OHH and move it into a structure and call it something different. She called the manufacturer and asked if there was any way to convert it to an indoor machine so it doesn't spew the toxins that it does. That was the primary concern of our Town with the OHHs. The manufacturer said, "No, there is nothing you can do about this." An OHH in its little shed outside is the same OHH if you brought it inside a garage. It will still be producing those toxins. She has no problem with the breezeway. The only problem she has is with the OHH. Unfortunately, because this is a town problem, which is her problem with it. This would set precedence and she doesn't want to see that happen.

There ensued discussion.

Ms. Fabre stated that to have them moved into a primary structure would be a grave concern to our town. The Town Council also feels strongly about this. What the Planning Commission did was work with the farmers, because they had some concerns that they would be out of business if we completely ban OHHs in our town. So we have a 5 acre minimum per parcel. It is allowed on 5 acres or more and they have to be defined as a farm.

Mr. Crosson asked if there was any way to tell if someone is using one in a building.

Ms. Fabre stated only if you know that that is what it is and you are familiar with OHHs and the spewing toxins. They burn differently than wood stoves, if that is what you are asking me. They have a slower burn combustion rate. They spew toxins, particles that are different in size than wood stoves and also, the hoppers in these big OHHs are so large that you can put any type of materials in there. So you can put all different types of wood in there, you can put wood that may have toxins in it and had been treated, so....I know that I am getting off the subject, but this is important. So what happens is that it is not your typical wood stove where you throw a log in....you can put an awful lot of things in it. You can put tires in these things.

Interruptive discussion.

Mr. Matuza suggested that if the Board was inclined to approve the application, they may want to have Mr. Craven write the decision, Mr. Cappuccio read it and the Board could vote on it at the next meeting.

There ensued discussion.

Mr. Cappuccio stated that they could incorporate the ordinance that the Town enacted in their decision. It defines an OHH.

Mr. Frank stated that he doesn't see why the Board needs to restate the ordinance.

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 stated that there doesn't seem to be any objection to the variance requested for the breezeway, as long as there are no OHHs on the premises, which is consistent with the Town Ordinance.

Mr. Dreczko added that with this becoming the primary residence, it is not clearly spelled out. You can read it in the record and include it in the record, it was stated that it does not say anything about it being in a primary residence. I agree with Mr. Matuza that something the motion should be written up an agreed upon before we vote on it.

Mr. Meyer added that the motion should include a stipulation that no OHH is permitted on the property, whether inside or outside the residence.

There ensued discussion.

Mr. Meyer moved that petition #1183 Rollin E. Ladd requesting a Dimensional Variance under Article VI, Section 218-32A, Table 32.1 Dimensional Regulations to construct a breezeway between the existing house and garage closer to property lines than allowed in an R40 Zone be approved with the condition that an OHH is prohibited on or in the property. Premises located at 621 Alto Carolina Road, Charlestown and is further designated as Lot 7 on Assessor's Map 24.

Mr. Crosson seconded the motion.

The Board felt that Mr. Ladd would not be here except for the fact that he has a pre-existing, pre-zoning garage which is 6' to the property line. His breezeway is more than the required 25' to the property line and I would add that an OHH is prohibited on the property as agreed to by the applicant and his attorney and that Mr. Craven review and write our decision for legal correctness. The hardship from which the applicant seeks relief is due to unique characteristics of the subject land and/or structure and not to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant. I say that because the applicant's wife has MS and said hardship is not the result of any prior action of the applicant or owners and does not result primarily from the desire of the applicant to realize greater financial gain. The applicant and his attorney are more than willing to agree not to have an OHH on or in the property as a condition. The final legal decision will be drafted by Robert Craven and presented to the Board at the next meeting on August 17, 2010 for a vote.

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

THE PETITION WAS GRANTED UNANIMOUSLY WITH THE STIPULATION THAT THERE WILL NOT BE AN OHH ON OR IN THE PROPERTY AND THE FINAL LEGAL DECISION WILL BE DRAFTER BY ROBERT CRAVEN AND PRESENTED TO THE BOARD AT THE NEXT MEETING ON AUGUST 17, 2010.

Mr. Rzewuski called the fourth petition.

**Petition #1185 Margaret L. Hogan, Esquire for Linda Bessette**

Requesting a Special Use Permit under Article XV, Section 218-87 to install an OWTS for a Single Family Dwelling in a V Flood Zone in an R2A Zoning district. Premises located at Charlestown Beach Road, Charlestown and is further designated as Lot 82 on Assessor's Map 9.

Margaret L. Hogan, attorney for the applicant, reviewed the history of the property and the DEM approvals. She entered photos of the supplemental notice posted at the property. She reviewed the requirements for a Special Use Permit of Section 218-87 Water Bodies. There ensued discussion.

Mr. Matuza stated the boundaries of new flood maps have not changed; the way of measuring has changed and will be adopted in August with different terminology. Ms. Hogan entered registered Land Surveyor, Donald Jackson's qualifications as applicant's exhibit #1. The Board stipulated him as an expert Land Surveyor. Donald Jackson, Land Surveyor, was sworn and explained the denitrofication OWTS and the history of the lot. He reviewed the ordinance requirements of Section 218-87.

There ensued discussion.

Mr. Rzewuski asked about the changes to the flood zone maps.

Mr. Jackson explained the function of the system and design. He reviewed the control panels that are monitored so venders know there is a problem before the homeowner. There ensued discussion on the renewal of maintenance contracts.

Ms. Hogan stated that Charlestown has a Wastewater Management Office and Specialist to add another level of monitoring and enforcement powers in addition to DEM. There ensued discussion on the DEM soil form.

James Dusty, Licensed Real Estate Appraiser, was sworn entered his certifications as exhibit #2.

Ms. Hogan asked the Board to recognize him as an expert.

Mr. Dusty reviewed the uses in the area and the consistency with the Comprehensive Plan. The installation of this system will not adversely affect the surrounding neighborhood.

Debra Nyskohus asked if she needed to relocate their well closer to road, would this system affect it.

Mr. Jackson stated that the relocation of the well will have to meet setbacks based on the existing approvals. After review of the area map, Mr. Jackson stated that this system is more than 100' from her property and would have no affect on her well location. There were no objectors present.

Ms. Hogan made closing arguments and asked that the Board grant approval. She read findings of fact and conclusions of law. The Board accepted Mr. Dusty as a real estate appraiser.

There ensued discussion among Board members. Mr. Crosson moved that the public hearing be closed. Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

Mr. Crosson moved that petition #1185 Margaret L. Hogan, Esquire for Linda Bessette requesting a Special Use Permit under Article XV, Section 218-87 to install an OWTS for a Single Family Dwelling in a V Flood Zone in an R2A Zoning district. Premises located at Charlestown Beach Road, Charlestown and is further designated as Lot 82 on Assessor's Map 9. Mr. Meyer seconded the motion.

The Board felt that granting of the special use permit will not pose a threat to drinking water supply, that the use will not disrupt the neighborhood or the privacy of abutting landowners with excessive noise, glare or air pollutants and that the sewage and waste disposal into the ground and the surface water, as explained by Jackson and water drainage from the proposed use will be adequately handled on site. The State has previously approved the septic system. With the testimony of Messrs. Jackson and Dusty, the applicant meets all the attributes of Section 218-87 of the Zoning Ordinance to install an onsite waste treatment system.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

### *Discussion Among Members*

Mr. Rzewuski thanked Mr. Shea for attending in Mr. Craven's absence.

### *Adjournment*

There being no further business, the meeting adjourned at 9:00 PM.