

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, December 14, 2010 at 7:00 PM at the Charlestown Town Hall, 4540 South County Trail, Charlestown, Rhode Island.

Members present: Michael Rzewuski
 Raymond Dreczko
 Ronald Crosson
 William Meyer
 Richard Frank
 Scott Northup, Alt. #1
 David Provanca, Alt. #2

Also present were, Robert Craven, Solicitor, John J. Matuza, Building/Zoning Official, Caroline Dion, Court Reporter and Ellen Hefler, Clerk.

Mr. Rzewuski welcomed Joe Warner, who was appointed by the Town Council at last night's Town Council meeting as the Building/Zoning Official and recognized the departure of John Matuza, who is retiring on December 28, 2010. He will be sincerely missed.

Mr. Matuza stated that he had enjoyed working with everyone.

Mr. Rzewuski stated that Amanda McGee was appointed 3rd alternate at the Town Council meeting last night and will be at the next meeting.

Pre-roll

Everyone present will attend the January 18, 2011 meeting.

There was discussion on the need for a separate meeting next month for an appeal. Mr. Craven stated that he was not certain that the Whalerock appeal will require more than an hour and half. There ensued discussion.

The Board decided to leave the Whalerock application on the January 18, 2011 agenda and to save February 10, 2011, in case it was needed.

Minutes

The minutes of the November 16, 2010 meeting were approved.

Mr. Rzewuski called the first petition.

Petition #1195 Ben Boisclair for Amy Hecht and Mauruce Van Swaaij

Requesting a Dimensional Variance under Article VIII, Section 218-40 Dimensional Table and 218-41 to construct an addition closer to property lines than allowed in an R20 Zone. Premises located at 177 Cedar Road, Charlestown and is further designated as Lot 389 on Assessor's Map 11.

The Board received a letter from Mr. Boisclair asking that the petition be withdrawn without prejudice.

Mr. Crosson moved to withdrawn without prejudice.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY WITHDREW THE APPLICATION WITHOUT PREJUDICE.

Mr. Rzewuski called the second petition.

Petition #1197 Margaret L. Hogan for Karyl Lee Theriault and Brian Ennis

Requesting a Dimensional Variance under Article VII, Section 218-41 and Article IV, Section 218-14 to create lots with less frontage than allowed in an R3A Zone. Premises located at Old Coach Road, Charlestown and is further designated as Lot 157 on Assessor's Map 23.

Margaret Hogan, attorney for the applicants explained the history of the property and the reason for the variance. When zoning changed to 3A and required road right of way to be 50', the applicant had no ability to develop this property without a variance. George Hibbard, Building Official made the determination that lot 3 on the map was buildable and there was no indication that the rear lot would be a problem. Donald Dinucci, Building Official determined that the rear lot did not have the required frontage to build. She summarized that the only way to develop the property was to apply for a comprehensive permit for affordable housing. She reviewed the process for applying for the approvals for 4 lots. They really only want 2 lots. The Planning Commission, neighbors and owners only want 2 lots, so the Planning Commission asked that the applicant make an application for a variance for the 2 lots. It has been approved by the Planning Commission provided the Zoning Board approves the variance for frontage. She reviewed the Bell and Golden cases and the differences between those cases and this case.

Mr. Meyer stated that each case is different and this evidence is irrelevant. There ensued discussion.

Mr. Craven stated that Ms. Hogan was presenting case law to represent her client at the next level if necessary. He asked her to make her presentation more concise.

Ms. Hogan stated that she was making a distinction between the cases. Without dimensional relief, there is no use of the property for residential purposes as zoned.

Mr. Crosson asked if the property was divided in half, would the lots have the required frontage.

Ms. Hogan stated that they would not. The lots would have a 40 foot strip to each of the two back lots. She reviewed the aerial photos for Map 23; Lot 157 dated April 27, 2010, by Dowdell Engineering and entered it as exhibit #1.

There ensued discussion.

Ms. Hogan stated that they would need ten variances to process the comprehensive permit before planning and reviewed each item required. Therefore, the variance for 2 lots would be the least relief necessary. This area is in the SAM Plan requiring denitrofication systems.

There ensued discussion about the January 23, 1990 Zoning Certificate.

Ms. Hogan reviewed and entered same as exhibit #2.

There ensued discussion.

Mr. Crosson questioned the relief necessary.

Ms. Hogan stated the lots would be about 7 acres each and the septic systems will be denitrofication designs.

There ensued discussion on the original intent of the owners.

Karyl Theriault was sworn and gave the history of her ownership of the lot. The property has been in her family since the 1920's. Her intention is to build a home for herself and one for her brother. Her father's intention was that they be able to build.

Ms. Hogan submitted a list of variances needed for the comprehensive permit as exhibit #3, the Golden decision as exhibit #4. The Goldens could install a Town Road, The Ennis family can not.

Mr. Dreczko questioned the highlighted map.

Ms. Hogan entered the map as exhibit #5.

There ensued discussion.

There were no objectors present.

Ms. Hogan made closing arguments, stated that to deny the variance would be a taking of the property.

Mr. Rzewuski asked if the comprehensive permit would include low to moderate income housing.

Ms. Hogan stated that the Planning Commission stated that they did not want it because it was not in best interest of the Town.

There ensued discussion.

Mr. Dreczko asked with respect to existing lot and frontage, if they could meet the minimum road width. If they pursued a plan that included 4 lot, would they need relief for width?

Ms. Hogan explained the difference between the 2 plans.
There ensued further 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. Crosson moved that petition #1197 Margaret L. Hogan for Karyl Lee Theriault and Brian Ennis requesting a Dimensional Variance under Article VII, Section 218-41 and Article IV, Section 218-14 to create lots with less frontage than allowed in an R3A Zone be approved. Premises located at Old Coach Road, Charlestown and is further designated as Lot 157 on Assessor's Map 23.
Mr. Dreczko seconded the motion.

The Board felt that for the reasons stated, the relief to be granted is the least relief necessary and will not be contrary to the public interest and welfare. As the application was presented, there are two areas to access the property in question, both with approximately 40' of road frontage. The intent today is to split that parcel into two properties, each to be accessed by individual driveways, located at each of those 40' areas. The fact that they could put in more lots than they are asking for tonight, as far as number of buildable lots and they are willing to reduce that number, results in a favorable impact than if they were to seek alternative relief for 4 building lots. The intent, in my opinion, at some point, whether or not there was any question, that it was the intent to put two or more houses back there is irrelevant. If the standards for a road had not change, it is conceivable that there could be a road that goes behind all of the houses that are currently along Old Coach Road and there could be 3 or 4 houses with no additional variances, to me it is a moot point. The 2 driveways as requested are reasonable. The land is separate from any of the other properties that were subdivided over time, to create the lots along Old Coach Road. The hardship from which the applicant seeks relief is due to the unique character of the land and the way it was sub-divided, but it is also not the result of any prior action of the applicants that are here this evening. It was certainly created by someone prior to these 2 people trying to subdivide this today. It will not change the general character of the area. The area is residential and they are asking for two residential homes. I am convinced by the information provided by Ms. Hogan that 2 lots as proposed would be the least relief necessary. There is sufficient evidence to convince me that Mr. Ennis, historically, would not have been in this position if he was aware of the changes, plus the fact that Zoning has changed. That is why I feel that it is the least relief necessary. What disturbs me the most is that when the Ennis family came before the Planning Commission with a Comprehensive Permit, they did not want to consider that proposal but preferred that they apply for this variance for 2 lots.

Ms. Hogan does feel strongly that the comprehensive permit, which would have included low and moderate income housing, would have been denied by the Planning Commission and would have required an appeal to SHAB. That is what disturbs me the most. The Town of Charlestown has no where near the minimum number of low and moderate housing units as mandated by the State and Ms. Hogan was confident that such an application would be denied by the Planning Commission.

Mr. Meyer stated that zoning is not a personality matter. The Ennis's are probably wonderful people, but it is a land matter and whatever we do is in perpetuity. I would also like to state, as I said before, that the fundamental principle behind zoning is its conforming. With that, I vote to deny the application. In granting the requested 260' variance for the right of way, when most of the frontages in the area are at least 150', I think that it will alter the general characteristics of the surrounding area and the intent and purpose of this ordinance.

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

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

Adjournment

There being no further business, the meeting adjourned at 8:40 PM.