

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, November 16, 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.

Pre-roll

Everyone present will attend the December 14, 2010 meeting.

Minutes

The minutes of the October 19, 2010 meeting were approved.

Mr. Rzewuski called the first petition.

Petition #1188 Wayne and Henry Fredette for the Fredette Trust

Requesting a Special Use Permit under Article I, Section 218-5B to construct an accessory use without a principle use in an R20 Zone. Premises located at Pond Street, Charlestown and is further designated as Lot 150 on Assessor's Map 9.

The Board received a letter from Mr. Fredette asking that the petition be withdrawn. Mr. Crosson moved that the petition be withdrawn without prejudice. Mr. Dreczko seconded the motion.

THE PETITION WAS UNANIMOUSLY WITHDRAWN WITHOUT PREJUDICE.

Mr. Rzewuski called the second petition.

Petition #1186 Helen E. Daly

Appealing the decision of the Building Official dated June 25, 2010 under Article IV, Section 218-28 and Article VI, Section 218-33B contiguous substandard lots in an R2A Zone. Premises located at Bay View Road, Charlestown and is further designated as Lot 280-1 on Assessor's Map 2.

Thomas Liguori, Attorney for the applicant sent a letter requesting continuance to the January 2011 meeting.

Mr. Crosson moved that the petition be continued to January 18, 2011.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO JANUARY 18, 2011.

Mr. Rzewuski called the third petition.

Petition #1187 Arline and Tamara Duker

Appealing the decision of the Building Official dated June 25, 2010 under Article IV, Section 218-28 and Article VI, Section 218-33 contiguous substandard lots in an R2A Zone. Premises located at 26 Bay View Road, Charlestown and is further designated as Lot 280 on Assessor's Map 2.

A letter was received from Vincent Naccarato, attorney for the applicant, requesting a continuance to January 18, 2011.

Mr. Crosson moved that the petition be continued to January 18, 2011.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO JANUARY 18, 2011.

Mr. Rzewuski called the fourth petition.

Petition #1189 Margaret A. Laurence for H. Jane Pierce Trust

Appealing the decision of the Building Official dated August 9, 2010 under Article IV, Section 218-25 Contiguous Substandard Lots in an R2A Zone. Premises located at East Arnolda Drive, Charlestown and is further designated as Map 12; Lot 45-1.

Margaret A. Laurence, attorney for the applicant asked that the application be withdrawn without prejudice.

Mr. Crosson moved that the petition be withdrawn without prejudice.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY WITHDREW THE APPLICATION WITHOUT PREJUDICE.

Mr. Rzewuski called the fifth petition.

Petition # 1194 Richard A. Greene, PLS for New Castle Realty Co.

Requesting a Special Use Permit and Dimensional Variance under Article VII, Section 218-41 Dimensional Table, Article VII, Section 218-43 A(2) and Article XIII, Section 218-78 to construct a Single Family Dwelling closer to property lines and associated OWTS closer to a wetland than allowed in an R3A Zone. Premises located at Shannock Road, Charlestown and is further designated as Lot 51 on Assessor's Map 29.

Richard Greene, Land Surveyor with Richard A. Greene and Associates was sworn, explained the requested relief and history of the property. He entered a deed from Potter to Wright dated May 27, 1950 exhibit #1, subdivision plan for Wright July 15, 1961 as exhibit #2, deed from Florence Wright to Castle Realty Company dated July 10, 1964 showing 2 parcels of land as exhibit #3, a deed from UBS to New Castle dated November 12, 2004 as exhibit #4. The first Zoning Ordinance was adopted July 8, 1974. The tax card shows a value of \$101,100 as exhibit #5. He reviewed the DEM approvals with the OWTS and Wetlands divisions. The house had to be moved closer to the road to maximize distance to the wetland. He reviewed the proposed house dimension.

Mr. Rzewuski asked why the house couldn't move back.

Mr. Greene stated that Wetlands requested that the house be moved forward before they would consider the application, which is the reason for the front setback relief.

Mr. Meyer stated that 75% of the house as proposed would be in the wetland. There ensued discussion.

Mr. Greene reviewed the 2004 plan that was denied.

There ensued discussion.

Mr. Crosson asked if the application is denied, what would happen.

Mr. Greene stated that Wetlands would deny the application and not allow building on the lot. He reviewed an aerial photo showing the nearest houses to the lot in question and the rural nature of the area.

Mr. Meyer stated that this building is not in keeping with the general character of the area.

Mr. Greene stated that is why they are here. The applicant would like to build a modest home on the lot. The lot has been in this configuration since the creation of the Shannock Road.

There ensued discussion.

Mr. Greene asked that the board grant the requested relief. The Engineer and owner are present and available for questions.

Mr. Rzewuski questioned the septic system.

Mr. Greene reviewed the design. There were no variances required from DEM.

Mr. Dreczko asked if they could get a conventional system pm the lot.

Mr. Greene explained the requirements for a conventional system and that due to the size, it would have to be closer to the wetland.

There ensued discussion on principals of the several corporations and the ownership of parcels on exhibit # 3 and #4.

Mr. Craven stated the meets and bounds description shows the same piece of property.

William Lampe, President of New Castle Realty was sworn and explained the history of the corporations.

Mr. Greene reviewed the attributes of Section 218-78 C and entered the documents as exhibit #6. The 1954 deed describes the lot by the same meets and bounds description as the current deed.

Paul Singer, attorney for Noel Rowe stated that his client is opposed to the application. Richard Pastore, was sworn and submitted his Education and Professional Experience as Objector's exhibit #1.

Mr. Rzewuski asked if Mr. Pastore was trying to say the DEM shouldn't have issued these permits.

Mr. Singer stated that Mr. Pastore will point out that this dwelling is almost 90% in a State mandated fresh water wetland.

Mr. Crosson asked if he felt that DEM erred it is issuance of a permit, which would not be a Zoning issue.

Mr. Singer read from the DEM approval.

Mr. Crosson stated that the applicant has DEM approval and an appeal of that approval would not come before this board.

There ensued discussion.

Paul Singer stated that dwelling is about 90% into the wetland, which is the reason for the disclaimer.

Mr. Crosson stated that DEM Wetlands has total control of fresh water wetlands.

There ensued discussion.

Mr. Matuza read a zoning certificate that he issued July 12, 2007 stating that this is a legal lot of record.

There ensued discussion on the Holmes case.

Mr. Crosson stated that the location of the proposed house was dictated by Wetlands. There ensued discussion.

Mr. Pastore submitted the plan as objector's exhibit #2. He reviewed the other uses in the area. He submitted the photo of property objector's exhibit #3 and explained the slopes of the lot. He reviewed the size of the back yard.

There ensued discussion.

Mr. Pastore explained how the Town of North Kingstown handles applications like this. There will be impact from grass, fertilizer and driveways, which increases the surface water runoff, which does not meet least relief necessary. The approval is for a 3 bedroom house. They could have asked for 2 or even 1 bedroom and reduced the size of the footprint. The house could have been smaller and gave examples imposed by Town of Jamestown.

There ensued discussion.

Mr. Pastore stated that about 85% of the house, 67% of driveway and 50% of the deck are in the perimeter buffer wetland. The deck could have been omitted for lesser impact. He reviewed a cluster subdivision across the street. He explained his experience with property owners violating the conditions of the Wetlands approval.

There ensued discussion.

Mr. Rzewuski questioned the location of the Rowe property.

Mr. Singer stated that he has an organic farm next to the subject property. He asked Mr. Pastore if the bottomless sand filter would deal with runoff from lawn fertilizer, gas and oil leakage from cars, paint, chemicals, etcetera, therefore have an adverse impact on wetland.

Mr. Pastore occupation of the property would add nitrogen. The bottomless sand filter removes nitrogen to very low levels. Unless the sand filter removed all of the nitrogen from the wastewater, there will be nutrients added to the groundwater. It will not treat any of the other elements from building on the property which would result in adverse impact on the wetlands.

There ensued discussion.

Mr. Singer asked if granting the dimensional variance solve the incursion of the wetland. Mr. Pastore stated that there is still 85% of the house is still in the wetland. Could move the house to where septic system is designed to go and be out of the buffer wetland. He could reconfigure the placement of the house and septic system, but it would make it more difficult to get approved.

There ensued discussion.

Mr. Crosson stated that his arguments should be with DEM Wetlands.

There ensued further discussion.

Mr. Singer asked if he looked at the 8 lot cluster subdivision across the street owned by New Castle. Locating the proposed house closer to the front property line defeats the purpose of having a buffer. He entered the preliminary plan of the cluster subdivision as objector's exhibit #4.

Mr. Pastore stated that the surface water runoff calculations are not done on lots this size.

There ensued discussion.

Mr. Dreczko stated that the development across the street is not relevant.

Mr. Singer stated that he did not think that it was the intent of the original owner to have this lot be listed as a buildable lot.

There ensued discussion.

Richard Greene stated that this lot was created when there was no minimum lot size. Mr. Singer stated that Mr. Wright did not consider this to be a lot. There ensued discussion.

Stewart Pucci, CPA and owner of Pucci and Green was sworn, gave his background in tax accounting and the benefit of gifts to non-profit tax exempt organization. Mr. Singer entered the annual report of New Castle Realty as Objector's exhibit #5 and reviewed the purpose of the company. Mr. Rzewuski asked the relevance to this variance and special use permit.

Mr. Singer stated there is a benefit of making a donation to a non-profit organization. Mr. Pucci explained the tax benefit.

Roe LaBossiere, acquisition manager for the Charlestown Land Trust was sworn and reviewed the purpose of the organization. He identified other parcels that the organization has acquired. He submitted a letter from the Charlestown Land Trust stating their purpose and the vote that was taken on November 10, 2010 to accept this parcel as a gift, if it were offered. He entered said letter as objector's exhibit #6.

Mr. Greene stated that they were not made aware that the trust was discussing this property. There ensued discussion.

William Lampe any discussion of the subdivision across the street is not part of this application.

Mr. Rzewuski asked Mr. Pucci if New Castle was doing anything different than any other corporation.

Mr. Pucci stated no.

Noel Rowe abutter of the subject property, was sworn and read his objection. This lot owned by the owner of property across the street. This lot is less than 80,000 sq.ft. and is not entitled to a building permit. He has a certified organic farmer and is sensitive to these issues. There is no house in the area this close to the road. It would set a bad precedent and he would not like to change the character of Charlestown.

Mr. Crosson pointed out that the lot is a legal non-conforming lot of record.

Mr. Rowe stated that it is not zoned to be built on and the Board should uphold the ordinance and deny the application.

Kevin Cronin was sworn and stated his concern for the wetland, property values and setting a precedence of creating small lot sizes.

There ensued discussion.

Robert Giles was sworn. His driveway is across the street from the subject property and the Board should maintain the rural setting. He paid more for his house because of the rural setting. This isn't a hardship because it is only for profit. He questioned the map and if there would be a front door. He would not have a problem if one of the original owners' descendents wanted to build on the lot.

There ensued discussion on the house design.

Mr. Greene reviewed the placement of the house, shrubs, stone wall and shrubbery. There was no one present in favor of the application.

Mr. Rzewuski stated that the Board tries not to take any new applications after 10:30 PM and asked if anyone would like to request continuance at this time. No one made that request.

Paul Singer made closing arguments, stated that New Castle Realty could realize substantial economic benefit by donating the property to the Charlestown Land Trust and asked that the petition be denied.

Mr. Crosson asked if the land trust made offer to purchase the property.

Mr. Singer stated that they did not.

There ensued discussion.

Mr. Dreczko asked the house plan, garage and driveway location.

There ensued discussion.

Mr. Dreczko asked if there is any reason not to move the deck forward to get some of it out of the wetland buffer.

There ensued discussion.

Mr. Lampe stated the deck is not imperative but it could certainly be moved.

There was further discussion.

Mr. Dreczko questioned the ability to shrink the house for the least relief necessary.

Mr. Lampe stated that to reduce the house by 6" would be a substantial additional cost for very little or no gain.

Mr. Rzewuski asked why they chose 3 bedrooms.

Mr. Lampe this is about the smallest house he could build. Whether it is 2 or 3 bedrooms, the dimensional relief will be the same.

There ensued discussion.

Mr. Dreczko asked about land trust.

Mr. Lampe stated that there was little chance. The trust wants a donation of the land and money to maintain that property. He has substantial expenses as a building lot and all the necessary DEM permits.

There ensued discussion.

Mr. Lampe stated that he has been working on the approvals for 5-6 years and was never approached by neighbors or the Land Trust proposing or suggesting a discussion.

Mr. Greene asked that the Board consider the relevant testimony and grant the relief.

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 reviewed the DEM approval and his explanation of the approval. There ensued extensive discussion.

Mr. Dreczko moved that petition # 1194 Richard A. Greene, PLS for New Castle Realty Co. requesting a Special Use Permit under Article VII, Section 218-43 A(2) and Article XIII, Section 218-78 to construct a Single Family Dwelling closer to property lines and associated OWTS closer to a wetland than allowed in an R3A Zone be approved. Premises located at Shannock Road, Charlestown and is further designated as Lot 51 on Assessor's Map 29.

Mr. Crosson seconded the motion.

The Board felt that it is a legal nonconforming lot of record. The presentation this evening was that the Advantex system, or some form of a bottomless sand filter would be the best option for this particular lot. That was even corroborated by the opposition's expert, Mr. Pastore, who stated that, at this time, it is the best technology in use. With respect to that, it is the most readily available, the best technology to preserve the wooded swamp on the back of the property, outside of not building on the lot at all, which in my opinion, isn't an option because it is a legal non-conforming lot of record and has an approval for the BSF. I believe that the public welfare and convenience will be substantially served. It will not result in adverse impact or result in conditions that will be inimical to the public health, safety, morals or general welfare of the community. Granting of the Special Use Permit will not pose a threat to drinking water, it will not disrupt the neighborhood or the privacy of abutting land owners by excessive noise, light or air pollutants. The sewage and waste disposal into the ground or drainage from the proposed use will be adequately handled on site. There will be no additional traffic generated by the proposed use and it won't change the general character of the surrounding area. Additionally, the fact that the bottomless sand filter is being proposed for this lot. It is a system that has regular maintenance and is overseen much more stringently than a conventional system would be. The requested relief is not the result of a self created hardship. This is a situation where the Town cut a road through the land and there is no reason to know why it was done or the original owner's intent was for that piece of property once it was annexed from the larger parcel. The public welfare and convenience will be substantially served. These applications are viewed and each one is unique. It is not always easy to make decisions that might disturb our neighbors. I believe that this board is very upfront and honest with what we are trying to do and to do it in a fashion that benefit all parties and we try not to be unfair to anyone. The Ordinance does not require analysis of groundwater or surface water runoff for a single lot. With respect to the concern for oil, metals and other human elements, the objector's expert could not testify as to the affect on the wetland and adjoining property after filtering. Therefore the petition could not be denied based on affect on groundwater.

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

THE SPECIAL USE PERMIT PORTION OF THE APPLICATION WAS GRANTED UNANIMOUSLY.

There ensued discussion of the dimensional variance.

Mr. Meyer moved that petition # 1194 Richard A. Greene, PLS for New Castle Realty Co. requesting a Dimensional Variance under Article VII, Section 218-41 Dimensional Table, Article VII, Section 218-43 A(2) and Article XIII, Section 218-78 to construct a Single Family Dwelling closer to property lines and associated OWTS closer to a wetland than allowed in an R3A Zone be denied. Premises located at Shannock Road, Charlestown and is further designated as Lot 51 on Assessor's Map 29.

Mr. Dreczko seconded the motion.

Mr. Meyer voted to deny the application. As we discussed earlier, we have two different bodies here. We have DEM whose purpose is to protect the drinking water and the surrounding area wetlands. Our charge is to uphold the statutes of the State of Rhode Island and Providence Plantations and the Zoning Ordinance of the Town of Charlestown. DEM is concerned about the wetlands and we have spent hours and hours catering to DEM and going along with it, but we have a responsibility to uphold of the State and Providence Plantations and the Zoning Ordinance of our town. We have a dichotomy. That said, I therefore vote to deny the application. As we discussed earlier, the property is in an R2A Zone. It is not like what we have down south of route one where the lots were always a lot smaller. Going back years and years. 60' by 120'. This is only .29 acres. And that if the board granted a variance, the general rural characteristic, as the neighbors pointed out, would really be compromised and would impair the intent and purpose of the town ordinances. Additionally, it was discussed in testimony here tonight that the application is the result of a desire for greater financial gain.

The remaining board members voted to approve the variance with the understanding that the applicant will move the proposed deck 3' closer to front of the home or, if he chooses, to make it any size smaller or do away with the deck all together, but at a minimum, move it 3' closer to the front of the house. It is my position that the people in opposition this evening seem to be in opposition based on the fact that it is a company putting up the home as opposed to a family member decedent of the original farm. The fact that this gentleman or corporation has purchased this property and chosen to develop the land isn't a hardship that he brought on himself. This road was put through the corner of this property by the town. It wasn't the applicant himself who offered up the road and created that hardship. The lot is being taxed as a buildable lot. It was a lot of record prior to the first zoning ordinance being adopted. As far as the statement of upholding our regulations, this predates it. It is not a new development. I am sure the subdivision across the way is under more stringent regulations because of zoning. The reason that it is being presented the way it is today as opposed to how it was presented to us this evening with the old documentation from 1961 or 1964 with 18 lots. That said, because of the shape, it is a hardship due to the unique characteristics of the subject property. The granting of the requested variance will not alter the general character of the surrounding area, is not due to physical or economical disability of the applicant. or impair the intent or purpose of the ordinance. And I say that from the standpoint that it is a residential home that is being presented to us this evening in a residential neighborhood. Houses are not cookie cuttered. They are not 19, 20, 31 feet off the road exactly from one neighbor to the next. Everyone is not made to put the same plantings out in the front yard or a pallet of five different colors to choose from. It's a residence in a residential neighborhood. The relief to be granted is the least relief necessary and not contrary to the

public interest and welfare. I want to point out that there were supposedly offers made for alternatives, but they really were not made until tonight. So the applicant was really not aware of such an offer and for better than two years, no one has approached him, which is difficult to believe. To that point, DEM told the applicant where the location of the house had to be and that said hardship is not the result of any prior action by the applicant or owners and does not result primarily from the desire of the applicant to realize greater financial gain. It was pointed out that whether it was a family or a corporation to build the house and sell it, there is no real difference.

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

THE DIMENSIONAL VARIANCE PORTION OF THE PETITION WAS APPROVED WITH FOUR (4) CONCURRING VOTES.

Mr. Rzewuski called the sixth 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.

Ben Boisclair was sworn and intend front stair to roof deck asking for 10' of relief for that deck.

Mr. Dreczko asked the reason for the roof top deck.

Mr. Boisclair stated the owner would like to see the ocean.

Mr. Meyer asked why not put the stairs on the back and not need a variance.

There ensued discussion.

Mr. Rzewuski stated that due to nature of the application, he would like to see some better drawings. He suggested that the applicant come back next month with better drawings.

Mr. Crosson moved to continue the application to December 14, 2010.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO DECEMBER 14, 2010.

Mr. Rzewuski called the seventh petition.

Petition #1196 Neil and Sherry Simon for Sherry L. Simon Living Trust

Requesting a dimensional Variance under Article VII, Section 218-41 to construct an addition closer to property lines than allowed in an R2A Zone. Premises located at 50 West Niantic Street, Charlestown and is further designated as Lot 183 on Assessor's Map 2.

Kelly Fracassa, attorney for the applicant, explained the relief sought. Paul Larson of Azzinaro and Larson Architects was sworn and explained the history of the property. He entered aerial photo of the lot as exhibit #1. He reviewed the proposed renovations.

There ensued discussion.

Mr. Dreczko questioned the size of the rooms.

There ensued discussion.

Mr. Matuza questioned existing condition and proposed construction.

Mr. Larson explained same.

There ensued discussion.

Mr. Larson asked if the Board would be inclined to grant the application if they cut room sizes.

Mr. Rzewuski stated that he could not see the hardship of room size.

Mr. Larson explained the existing condition and altering the room sizes would still need a variance.

Discussion of existing and proposed plan.

Mr. Larson stated that almost half the house was built over the required setbacks.

Mr. Crosson moved that the petition be continued to January 18, 2011.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO JANUARY 18, 2011.

Mr. Rzewuski called the eighth 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.

Given the hour, Mr. Crosson moved that the petition be continued to December 14, 2010.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE HEARING TO DECEMBER 14, 2010.

Adjournment

There being no further business, the meeting adjourned at 11:00 PM.