

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

The Charlestown Zoning Board of Review held a regular open meeting on Tuesday, January 19, 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 B. Provancha, Alt. #2

Also present were, Robert Craven, Asst. Solicitor, John J. Matuza, Building Official, and Caroline Dion, Stenographer.

Minutes

The minutes of the December 15, 2009 meeting were approved as written.

Pre-roll

Everyone present will attend the February 16, 2010 except Mr. Meyer.

Meeting will be televised COX 18 Wed. 2 & 10:00PM.

Mr. Rzewuski called the first 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.

The Board received a letter from Margaret L. Hogan, Attorney for the applicant, requesting continuance to the March meeting.

Mr. Dreczko moved that the petition be continued to March 16, 2010.

Mr. Crosson seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO MARCH 16, 2010.

Mr. Rzewuski called the second petition.

Petition #1164 Metro PCS for the Narragansett Indian Tribe

Requesting a Special Use Permit under Article XV, Section 218-105 and 218-25 to add telecommunication facility on an existing tower in an R2A Zone. Premises located at Kingswood Court, Charlestown and is further designated as Lot 119 on Assessor's Map 17.

The Board received a letter from Metro PCS requesting continuance because no notice was sent to the abutters.

Mr. Crosson moved that the petition be continued to February 16, 2010.

Mr. Frank seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO FEBRUARY 16, 2010.

Mr. Rzewuski called the third petition.

Petition #1168 Charlestown Historical Society for Donald Dodson

Requesting a Dimensional Variance under Article XIX, Section 218-158 to construct a small Museum closer to property lines in a TVD Zone. Premises located at 4435 Old Post Road, Charlestown and is further designated as Lot 128 on Assessor's Map 12.

The Board received a letter from the applicant requesting continuance to February 16, 2010.

Mr. Crosson moved that the petition be continued to February 16, 2010.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO FEBRUARY 16, 2010.

Mr. Rzewuski called the fourth petition.

Petition #1162 Jeffrey W. Ray, Esq. for Nancy I. Log

Appealing the decision of the Building Official made November 9, 2009 under Article VI, Section 218-33 on the lot merger provision. Premises located at 92 Lauri Drive, Charlestown and is further designated as Lots 32 and 32-1 on Assessor's Map 27.

Thomas Gonnella of Pannone, Lopes, Devereaux & West, attorney for the applicant, explained the history of the case and the relief sought. Not the result of any action of her. He quoted 218-33E to show that the merger provision does not apply here. There ensued discussion.

Mr. Crosson read the merger provision.

Mr. Gonnella agreed with the reading. He went on to explain the circumstances and added that the applicant never received a notice from the Town that her lots were merged. There ensued further discussion on the history of the case.

Mr. Crosson asked Mr. Gonnella for an ordinance reference to support his argument that this was not the intent.

There ensued discussion.

Mr. Gonnella stated that this is a unique case. Ms. Log has two pre-existing non-conforming lots. Her husband dies and the merger provision applies and takes away her right to use the lots separately.

Mr. Rzewuski asked Mr. Craven to interpret.

Mr. Craven stated that the Board has enforcement and interpretive powers. He added that there is a court of equity where the court could remake the interpretation of the merger provision to fit the circumstances that the applicant finds herself in. He explained the meaning of ownership as tenants by the entirety. This Board interpreted 218-33 B (1) relative to the merger provision which is pretty clear. This type of situation may or may not have been considered when this ordinance was created. The place to get that type of interpretation is with a court of equity or the Superior Court.

There ensued discussion.

The Board received a letter from David and Susan Carlson in favor of the application.

Mr. Rzewuski asked Mr. Matuza how this situation came to his attention.

Mr. Matuza answered that a title attorney asked the question and he responded.

There were no objectors present.

Mr. Crosson moved to close the public hearing.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Crosson moved that petition #1162 Jeffrey W. Ray, Esq. for Nancy I. Log, appealing the decision of the Building Official made November 9, 2009 under Article VI, Section 218-33 on the lot merger provision be denied and November 9, 2009 Building Inspector's decision be upheld. Premises located at 92 Lauri Drive, Charlestown and is further designated as Lots 32 and 32-1 on Assessor's Map 27.

Mr. Dreczko seconded the motion.

The Board felt that under section 218-33B "Contiguous Substandard Lots", and with reference to the language, "such lots shall be considered to be a single lot and no portion thereof shall be used in violation of any of the requirements." I did not include the infrastructure portion because I feel that refers to a structure. This decision upholds the decision of the Building Official in his letter dated November 9, 2009. The Board, like the Building Official, has to interpret the ordinance as written and not substitute his or our opinion for the language of the Ordinance.

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

THE PETITION WAS UNANIMOUSLY DENIED AND THE DECISION OF THE BUILDING OFFICIAL UPHELD.

Mr. Rzewuski called the fifth petition.

Petition #1165 Charles Burton

Requesting a Special Use Permit under Article XV, Section 218-87 to construct a Single Family Dwelling with associated OWTS in an R2A Zone. Premises located at Wildflower Road, Charlestown and is further designated as Lot 45 on Assessor's Map 5.

Donald J. Packer, attorney for the applicant explained the relief sought. Joseph W. Frisella, Professional Engineer, was sworn. He entered his resume as exhibit #1. He reviewed the OWTS design and submitted it as exhibit #2 and reviewed the site conditions. The DEM approval was entered as exhibit #3 and he reviewed the design.

The Board recognized Mr. Frisella as a Professional Engineer. Mr. Frisella identified and explained the wetland. He entered the CRMC determination and identity of the wetland as exhibit #4. He reviewed the ordinance requirements of 218-87 and entered his identification of each item as exhibit #5.

Mr. Rzewuski asked how he determined the direction of the groundwater flow. Mr. Frisella stated that he is also a hydrologist. In this case, as in most cases, the groundwater follows in the direction of the contour. There ensued discussion. There were no objectors present.

Mr. Packer made closing arguments. 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 #1165 Charles Burton requesting a Special Use Permit under Article XV, Section 218-87 to construct a Single Family Dwelling with associated OWTS in an R2A Zone be approved. Premises located at Wildflower Road, Charlestown and is further designated as Lot 45 on Assessor's Map 5. Mr. Dreczko seconded the motion.

The Board felt that the applicant met all criteria of the ordinance and there are no setback issues. The requested Special Use Permit will not alter the general character of the surrounding area, or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which this ordinance is based. All the criteria of Section 218-87 and 218-25 have been met. Also there was a question of the ability to locate the system elsewhere on lot and it was stated by Mr. Frisella that it could not be done. The applicant was very well prepared and submitted a concise application.

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

THE PETITION WAS GRANTED UNANIMOUSLY.

Mr. Rzewuski called the sixth petition.

Petition #1166 Thomas Doyle

Requesting a Dimensional Variance under Article VI, Section 218-32 A and 218-33 A(2) to construct a garden shed closer to property lines and exceeding the allowable lot coverage in an R2A Zone. Premises located at 32 Neptune Avenue, Charlestown and is further designated as Lot 143 on Assessor's Map 2.

Mr. Rzewuski stated that Mr. Meyer recused himself and Mr. Northup would be voting. Thomas Doyle was sworn and explained the petition, the history of the property and the request relief.

There ensued discussion.

Mr. Rzewuski asked if there was any other locations on the lot that it could be placed. Mr. Doyle stated there are locations where he could place it further from the property line. There ensued discussion.

Mr. Doyle added that he was willing to move it, if the board requires.

Mr. Dreczko asked if it could be placed on blocks.

Mr. Matuza stated that it could.

There ensued discussion on the dimensional relief, lot coverage relief and least relief necessary.

Mr. Matuza stated that it could not be located on the leach field or the tank.

There ensued discussion on possible amendments to the plan.

The Board suggested that it might be in the applicant's best interest to ask for continuance and amend the site plan to further comply with new location.

Mr. Doyle requested continuance to February 16th.

Mr. Dreczko asked Mr. Matuza to meet on site to review lot coverage and setbacks.

There ensued discussion of continuing the application to February 16th with the possibility that the application would be amended with new notice to the abutters and readvertisement or the application will be withdrawn and a new application filed.

Mr. Crosson moved that the petition be continued to March 16.

Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CONTINUED THE PETITION TO MARCH 16, 2010.

Mr. Rzewuski called the seventh petition.

Petition #1167 Joseph M. and Holly S. Rubbo

Requesting a Dimensional Variance under Article V, Section 218-33 Table 32-1 to add two small additions on the front of the home closer to property lines than allowed in an R2A Zone. Premises located at 34 Ninigret Avenue, Charlestown and is further designated as Lot 164 on Assessor's Map 2.

Donald J. Packer, Attorney for the applicant, explained the icing problem on the front of the house and the reason for the petition.

Holly Rubbo was sworn and explained the relief sought. The elevations of house were entered as exhibit #1, photo of the front as exhibit #2, site plan as exhibit #3. The proposed work will be no closer to the front line than the house already exists.

There ensued discussion on the site plan.

Mr. Dreczko questioned the elevation.

There ensued discussion.

Mr. Matuza explained the height measurement and that it will not exceed 30'.

Mr. Packer stated that they are not asking for a height variance.

Mr. Rzewuski questioned the need for the added height.

Ms. Rubbo stated esthetics.

Mr. Packer stated that the design addresses the drainage problem from roof runoff.

There ensued further discussion.

Mr. Meyer stated that the prior owner applied for a variance, the application was modified and granted by this board.

Ms. Rubbo stated that she was trying to give some curb appeal and address the problem with the ice.

Kathleen Prior was sworn and stated that aesthetically the plans would improve the neighborhood.

J. Robert Beach was sworn and stated that he had more than doubled the size of his house without variances. He stated his objections and asked the Board to carefully consider the application.

Ms. Rubbo stated that she has been coming to this location all her life and was afraid of her parents falling on the ice.

Mr. Dreczko asked if the entry will be the same as the existing.

Ms. Rubbo stated it is.

Mr. Dreczko questioned the need for the pergola.

Ms. Rubbo stated esthetics.

Mr. Matuza stated that it is a structure and included in the lot coverage.
There ensued discussion.

Ms. Rubbo stated that it is the walkway that leads to the front steps.
Mr. Rzewuski stated that it would shade an area that has shade and is causing the ice problem.

There ensued discussion.

Mr. Matuza pointed out that the pergola is not shown on the site plan so the Board could not consider that relief.

There ensued 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 to reopen the public hearing.
Mr. Frank seconded the motion.

THE BOARD UNANIMOUSLY REOPENED THE PUBLIC HEARING.

Mr. Matuza reviewed the Tax Assessor's field card and explained the location of the existing portico and the proposed porch.

Mr. Packer added that the site plan that he sent with the notice to the abutters did not include the pergola.

Mr. Crosson moved to close the public hearing.
Mr. Dreczko seconded the motion.

THE BOARD UNANIMOUSLY CLOSED THE PUBLIC HEARING.

There ensued discussion.

Mr. Crosson moved that petition #1167 Joseph M. and Holly S. Rubbo requesting a Dimensional Variance under Article V, Section 218-33 Table 32-1 to add two small additions on the front of the home closer to property lines than allowed in an R2A Zone be approved without the pergola. Premises located at 34 Ninigret Avenue, Charlestown and is further designated as Lot 164 on Assessor's Map 2.
Mr. Dreczko 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/or structure and not to the characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.

Granting the requested relief will not alter the general character of the surrounding area or impair the intent or purpose of this ordinance. The approval is based on the revised site plan dated April 22, 2009. With respect to the new portico and the added closets on the front of the home, the new portico is not encroaching on the front line setback any more than the existing structure. It is being expanded to provide protection against inclement weather and as a safety precaution. The bedrooms on the first and second floors on the right of the home should have closets and the second entry will be closed off and will not to exceed the existing footprint. The testimony satisfies the burden of proof of hardship.

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

THE PETITION WAS GRANTED UNANIMOUSLY AS AMENDED.

Discussion among members

Discussion of requiring a survey for certain applications before the Zoning Board. Mr. Matuza explained that there are 5 types of surveys. Currently, a survey is not required.

There ensued discussion.

Mr. Matuza stated that the responsibility is held by the owner. If there is a problem, they may have to survey the property or remove the construction.

There ensued discussion on relying on the site plan, if it is not correct.

Mr. Crosson stated that he felt that we should proceed as we have previously and require a survey when the case warrants.

There ensued further discussion.

Election of officers.

Mr. Crosson moved that the current officers be re-elected for another year.

Mr. Frank seconded the motion.

THE BOARD UNANIMOUSLY RE-ELECTED THE CURRENT OFFICERS FOR ANOTHER YEAR.

Chairman, Michael Rzewuski.

Vice-chair, Raymond Dreczko

Secretary, William Meyer

Adjournment

There being no further business, the meeting adjourned at 10:00 PM.