

**Foster Zoning Board of Review
Minutes of the June 13, 2007 Meeting**

Vice Chairman William Gibb called May 9, 2007 meeting of the Foster Zoning Board of Review to order at 7PM in the Benjamin Eddy Building. The following members were present:

Carl Saccocio, Chairman was absent

William Gibb, Vice Chairman

Lori Mihailides, Secretary

Heidi Colwell

Scott Pollard

Joseph Walsh, Alternate

Paula Mottshaw, Alternate

John J. Bevilacqua, Town Solicitor and Robert Fallon, Building Official were also present

Minutes:

Mr. Pollard moved, Heidi Colwell seconded the motion and it was voted to approve the minutes of the May 9, 2007 meeting as published.

Decisions:

There were no decisions read.

Hearing # 07-07, Albert and Catherine Allard, Plat 16 Lot 20A:

Hearing #07-07 for Albert and Catherine Allard, Plat 16 Lot 20A 199 Hartford Pike, applicant is requesting a 35' dimensional variance from the western property line for the construction of a garage used for personal use.

Albert Allard spoke in favor of the application stating he was building a 2 car garage and needed a 35' dimensional variance.

No one spoke in opposition.

Bob Fallon stated he did a site review and stated that everything is built on the western side of the lot, the driveway is very close to property line ISDS is in the front yard, and septic system hinders the garage from the 50' requirement. Mr. Fallon states that said location would be the best site for garage.

Mr. Pollard states that Mr. Fallon has made a good case for applicant's hardship.

Scott Pollard moved, Lori Mihailides seconded the motion and it was so voted that a 35' dimensional variance from the western property line for the construction of a 2 car garage under Article 4, Section 13 was granted.

Scott Pollard moved, Heidi Colwell seconded a motion to adjourn the June 13, 2007 Foster Zoning Board of Review meeting at 7:15pm.

Attest

Lori Mihailides, secretary

Foster Zoning Board of Appeal Minutes of the June 13, 2007 Meeting

Vice Chairman William Gibb called May 9, 2007 meeting of the Foster Zoning Board of Review to order at 7PM in the Benjamin Eddy Building. The following members were present:

Carl Saccocio, Chairman was absent

William Gibb, Vice Chairman

Lori Mihailides, Secretary

Heidi Colwell

Scott Pollard

Joseph Walsh, Alternate

Paula Mottshaw, Alternate

John J. Bevilacqua, Town Solicitor and Robert Fallon, Building Official were also present

Hearing #07-01, Paul & Linda Lombardi, Bradford Gorham, Christopher & Gemma Gorham, Harold Fell, Barbara Fell of Harrington Road, Cucumber Hill Road, Plat 4, Lot 72A, 24, 84, Plat 1, Lot 27

Hearing #07-01 Appeal from preliminary approval by Foster Planning Board of Intrica Group, llc Plat 4 Lot 87, Cucumber Hill Road and Harrington Road subdivision into 5 lots. Decision of Planning Board approved and filed 4/18/07 under RIGL 45-23-57.

Brad Gorham of 11 Cucumber Hill Road spoke in favor of the appeal. He stated that almost all abutters are against the subdivision and that no one had received notice from the Planning Board regarding the subdivision hearing.

Mr. Gorham states that the state law says that a major subdivision is 6 lots or more and a minor subdivision is 5 lots or less, in the case of a minor subdivision public notice is not needed unless there are waivers or modifications that have to be made. In the case of modifications the minor subdivision becomes a major subdivision and the public therefore must be notified. Mr. Gorham refers to laws 45-23-38-80 and 45-23-60.

Mr. Pollards asks about the language of the law about notice requirements.

Mr. Gorham states that if the planning board does not make some positive findings that are required by section 60 of the subdivision laws, in section 60 it says, as according to the zoning ordinance, there can't be environmentally difficult and will not create lots with physical constraints. Mr. Gorham also states that this should have been reassigned as a major subdivision and from that point we would have gotten notice.

Mr. Gorham states the following:

- That he had gone through the minutes of the planning board meeting.
- The planning board itself had a number of questions they raised about difficulties with this application.
- The streams around the property were not delineated, two streams do not appear at all.
- On the soils map for this site the two streams show up clearly.
- Streams are mention in a letter from Natural Resources Services on December 4, 2006 to the engineer for the project. Exhibit A

- Letter from the Rhode Island Department of Environmental Management dated June 13, 2006 discussed streams and pond on the property.
- Letter from DEM on June 15, 2006 states the 2 streams are not on the plan.
- Planning Board had a concern on the high maintenance requirements on the five bottomless sand filters. They require pumps, alarm systems, generators and so forth.
- Planning Board said they were not happy with the number of lots squeezed in on the property, that there were a lot of environmental pressure on sensitive area. Refers to the fact that a large percentage of this property is wetlands.
- The Foster Ordinance has a provision that any septic system will be 200' from any spring, pond, or stream. In this case the septic system on the southern most property line appears to be 200' from the pond. The pond itself for some reason has been lowered by an estimation of about 5'. This pond is a dam, the way the water escapes from the pond, it doesn't flow over the dam, it goes into a pipe and down to the base of the pond and under the dam, a common farm pond. Someone within the last year or so has moved the pipe so that the level of the pond went down about 5' or so, making the pond quite a bit smaller.
- The Planning Board found that there were no standard of inspections of the bottomless sand filter systems. No requirements for back up power.
- The board went on to say they weren't comfortable with applicant because there were 5 lots within a compact area. But said it was within the regulations of the town.
- The existing barn on the property needs a variance because it is within 16' of the property line.
- The barn is in an historic district, The Moosup Valley Historic District.
- Lot A – Next to Dead Cow Brook, the proposed septic system is far enough from Dead Cow Brook but it does infringe on the limit from an intermittent stream that goes through the middle of the stream.
- Lot B – The stream is not delineated.
- Lot C – Is the lot with the barn on it. The applicant said if he did not get the relief he needed he would just tear the barn down.
- Lot D – If the line is moved for the barn then the septic system will not be in compliance.
- Lot E – The lot where the pond was drained. Also there are extremely steep slopes, in the documents submitted in the application the engineer states in a letter of January 29, 2007 to the planning board they concur that proportions of the topography are very steep and will require a combination of cutting and filling and a retaining wall to create a flat area for development which is contrary to The Comprehensive Plan.

Christopher S. Gorham of 22 Cucumber Hill Road states:

- Feels the Planning Board has erred in approving the subdivision for all the reasons stated by Mr. Brad Gorham.
- Voters have shown that one of their main concerns are to keep the Town of Foster rural and he feels that this subdivision on this lot in his opinion takes away from the rural character of that area. It is a very visible area on the way to the country club.
- Destroying the historical barn
- Bottomless sand filters puts extra expense and burden on the town to monitor and inspect.
- He has also witnessed the pond level being lowered, he has lived across from the pond since 1990 and it has always been about 3 or 4' deeper than it is.
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Mr. Pollard asks if he actually witnessed someone lowering the pond.

Mr. Christopher Gorham states that he has witnessed, that it is lower and not that he has seen someone lowering the pond. Thinks there should be a design were we do not need so much new technology to be able to make these lots build able. Building on these lots will greatly impact the wildlife.

Mr. Gibb reads the Standard of Review.

Paul Lombardi presents pictures of the stream, and states he did witness a back hoe working on the dam and weeks lower the pond was lower.

Mr. Bevilaqua states that we can not take new evidence.

Mr. Gorham states that the pictures should be submitted because the streams are not delineated on the map.

Pictures are entered as an exhibit.

Mr. Bevilaqua states that we can not introduce new evidence, new exhibits, or new testimony, we have to refer to that testimony that went before the planning board because they are the ones who are being reviewed.

Barbara Fell lives near Dead Cow Stream her concern is about the pond that is lowered and the wildlife being affected, and is also concerned that she was not notified of the meeting with the planning board.

Edward Olausen of 12 Cucumber Hill Road states that he is concerned about the level of the pond which is lower. There is a lot of ledge, the water table goes along some of the ledges and is concerned that it will affect his well water.

Anne Grenier 41 Walker Road, of the Preservation Society states the following:

- Historic assets be noted
- Application is not correct because it said no that the lot was not in an historic district and it is in the Moosup Valley Historic District.
- Should have been a major subdivision and not a minor subdivision.
- Barn was part of the William Harrington Farm built in 1917; Barn is definitely listed as a Historic building.

Robert Boyden of 18 King Road states that referring to Lot E and looking at the site plan, Lot E is a real stretch the worse thing he sees is the location of the driveway. North bound traffic on Cucumber Hill Road has a serious visibility issue.

Mr. Gorham wants to establish that none of the abutters were notified of hearing at the Foster Planning Board in this matter.

Mr. Peter Ruggiero representing Intrica Group states the following:

- Their position is that the decision of the Planning Board committed no clear error or prejudicial procedural error and the decision was more than adequate and supported by the weight of the evidence.
- Addressed the question about major or minor subdivision. Never classified as a major subdivision by the Planning Board.
- Each certificate of completeness lists this application as a minor subdivision. Each of these appellants or any one else could have challenged that classification but failed to do that and can not raise that issue at this time because it is out of time. The application began in 2005.

Mr. Pollard asks how anyone would have raised these concerns if they were not notified about the application.

Mr. Ruggiero states that it was his understanding the Mr. Brad Gorham was the town solicitor at the time and he is sure that he knew about this application at the time. He also states that there were three events where this application was on the agenda of the Planning Board, October 2006, November 2006 and January 2007 and could have been appealed in terms of the classification.

Mr. Ruggiero further states:

- It was not required by law for the applicant to notify abutters. Some people had even asked the planning board to notify them so they had to know about the application.
- Each time a question arose in the October 2006 meeting, all were addressed and answered.
- Streams were delineated, 1st delineation did not identify the streams but the second one did.
- Pond was inspected by the DEM who determined there were no problems or issues. If there are allegations that the pond was altered with they do not belong here they belong to the DEM.
- Septic Systems met all design requirements. The Planning Board's stipulations require back up generator and maintenance all expenses which are the obligation of the homeowner. State has the obligation to inspect the septic systems not the town.

Paul Mottshaw asks whose responsibility it is to monitor the generators.

Mr. Ruggiero states that it is the town's and home owner responsibility.

Mr. Ruggiero further states:

- Intrica Group never indicated they wanted to demolish barn. He wants to develop the property to the maximum.
- His client presented the application to the Planning Board and they determined the 5 lots were permissible under the town's regulations. No waivers or modifications are being requested, a variance is different than the two, do not be confused by these terms.
- Client stated that he would go for the variance in order to save the existing barn.

Mr. Pollard asks if having his client apply for the variance for the barn itself, wasn't the proposed development not in compliance with the standards and provisions of the municipal ordinance.

Mr. Ruggiero states that they could move the line but the planning board did not like that idea. So holding the line firm creating a need for a variance, the planning board felt it was more important to preserve the barn. If the zoning board denied the application for the variance it creates a different situation, we do not know that.

Mr. Pollard asks his questions again.

Mr. Ruggiero states his client did not relief, he sought the relief at the request of the planning board to preserve the barn which he believed was an admirable thing to do.

Mr. Brad Gorham states that he did ask the zoning clerk to let him know if or when this subdivision was coming before the planning board.

Mr. Ruggiero puts an objection on record.

Barbara Fell would like to be sure we know that the Historical Building was not checked on the application, variance not given when applicant created need for financial gain.

Mr. Christopher Gorham states his concerns with the barn and its preservation, and as an abutter it is within his right to appeal a decision.

Julia Parmertier of the Foster Planning Board states the following:

- Certificates of completeness are in fact certificates of incompleteness.
- The Barn was expendable on part of the developer
- Request Brad Gorham be notified was overlooked because of the process of change in new clerk.
- The information regarding the lowered pond is new to the planning board.

Mr. Joe Walsh has a question to Mr. Bevilaqua regarding the procedure of minor and major subdivisions.

Mr. Bevilaqua advised the board that we should take time to review the testimony before making a decision.

Scott Pollard moves and Joe Walsh seconded to postpone this decision to the next meeting in order for the board to have proper time to review the testimony.

Heidi Colwell moves and Scott Pollard seconds the motion to adjourn the Foster Zoning Board of Appeal meeting at 8:20pm.

Attest
Lori Mihailides
secretary

