

## **Foster Zoning Board of Review Minutes of the August 8, 2007 Meeting**

Chairman Carl A. Saccoccio called August 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 Saccoccio, Chairman

William Gibb, Vice Chairman was absent

Lori Mihailides, Secretary

Heidi Colwell

Scott Pollard

Joseph Walsh, Alternate

Paula Mottshaw, Alternate was absent

John J. Bevilacqua, Town Solicitor, Robert Fallon, Building Official and Carole A.

Malaga, stenographer was also present.

### **Minutes:**

Scott Pollard moved, Lori Mihailides seconded the motion and it was voted to approve the minutes of the July 11, 2007 meeting as published.

### **Decisions:**

Decision for Harold & Carol Shippee, hearing #07-09 applicant/owner of property Plat 17 Lot 1 Mt Hygeia Road for a 38' dimensional lot line variance for a deck in accordance with Article VI, Section 13 of the Foster Zoning Ordinance was read.

Decision for Brian E. Carpenter representing John and Ann Lucas, hearing #07-05 applicant/owner of property Plat 10, Lot 28 Danielson Pike for a dimensional variance for a septic system was read

Decision for North West Community Health Center, hearing # 07-06 applicant/owner of property Plat 10, Lot 20 Rte 6 & Shippee School House Road for a dimensional variance and maximum coverage variance was read.

### **Hearing # 07-10, Thomas & Lynn Shemick, Plat 17 Lot 46**

Hearing # 07-10 for Thomas & Lynn Shemick, Plat 17 Lot 46, 76 Winsor Road, applicant is requesting a special use permit to use his first level of garage as an office/ repair and calibration of precision instruments under Article IV Section 11 #1 of the Foster Zoning Ordinance.

Mr. Shemick spoke in favor of his application stating the following:

- His business poses no environmental issues
- No chemicals are used
- It is a dust free environment
- No customers would ever visit his office
- All work is done on outside of his office
- He has no employees
- There is no noise involved with his business

- His business consists of precision measuring of equipment

Mr. Shemick produces a catalog with examples of the type of work he does and equipment he uses. Mr. Shemick states he has had his office in said building for two years and the building was built by using people and resources from the town.

Mr. Shemick states that as his wife works, having his office at home gives him the opportunity to take care of his children without sending them to a daycare, it also allows him to be in town as he is on call as a volunteer at the local fire station.

Mr. Charles Goucher spoke in favor of the application.

Mr. Charles Stockwell spoke of favor of the application, stating he lives across the street and has been in said building many times, says there is no environmental risk, it is quiet and there is no disruption to the quality of life in the neighborhood..

Mr. Kenneth Fountain spoke in favor of the application stating he agrees with Mr. Stockwell and he has also been in building and has no issues.

Ms. Audrey Carey spoke in favor of the application stating she has no issues with Mr. Shemick having an office in his building, says had she not known the Shemicks she would have never known there was a business there, there are no signs posted. She also states it is harassment towards the Shemicks on the neighbor's part.

Mr. Gordon Brayton, Fire Chief spoke in favor of the application and states that he has been in the building many times and there is nothing hazardous in said building.

Edward & Pamela Fallens's attorney speaks in opposition of the application.

Questions are directed towards Mr. Shemick, they are the following:

Asks Mr. Shemick if he is aware that in order to grant this special use variance your building needs to have a 100' setback from the front property line. Said building is only 35' from the road. Asks Mr. Shemick if he has applied for a setback variance. Mr. Shemick states no. Asks how many stores there are in the building.

Bob Fallon states this is a three story building.

Mr. Saccoccio states by looking at the picture the building is a two story building with a walk out basement.

Mr. Shemick states he is asking for an office on one level of his building the rest of the building is used for personal use.

The Fallen's attorney states that Mr. Shemick has been conducting business out of this building for two years.

He also states that the Fallen's had complained about the noise. Mr. Saccoccio asks Mr. Fallon, the building official if there had been any complaints on the property besides the Fallens. Mr. Fallon states there has not been.

The Fallens have also complained about the placement of the driveway, that it is almost directly across from their driveway and that there are many deliveries by UPS, causing a safety issue.

Mr. Bevilacqua requests that all questions be directed towards the board.

Mr. Shemick states that some deliveries are personal and he does not know how many deliveries he has gotten in the month of April. Mr. Shemick shows a diagram of his driveway to the board.

Mr. Bevilacqua states that the driveway is an approved driveway and would like to get back to the matter at hand.

The Fallens's attorney states that the driveway is a safety hazard. He also asks hours of operation and how many employees are employed. Mr. Shemick states from 8:00am to 5:00pm and he has subcontractors occasionally.

The Fallens's attorney asks the following and Mr. Shemick answers

Do you require water for repairing the instruments? Answer: No

Do you use any hazardous waste or chemicals? Answer: He only uses alcohol or WD-40

Are there any machines such as lathes or any other type of machinery used in your business? Answer: Calibrator and other hand tools, no grinders.

Mrs. Fallens speaks in opposition to the application stating her concerns:

- Machine noise from the building starts very early in the morning.
- Noise sounds like an automotive shop and her house is only 50' away from his building.
- Concerned about the safety of her children who have to walk on the road for the school bus with the traffic of UPS trucks delivering to the business.
- States that the UPS truck is there twice a day
- Has called UPS to state her concerns about safety.
- Says that Mr. Shemick is operating his business at night.
- There are different cars in the driveway at different times
- Registered complaints starting in April 2007 with the building official.
- Concerned about her property value with the noise.

The Fallens's attorney submits to the board that the board can not grant the special permit because Mr. Shemick needs dimensional relief from the 100' setback and the two story building. He respectfully requests that the application be denied and the building official issue a cease and desist order to Mr. Shemick's business.

Judith Dzikiewica of 10 Boss Road states that she is concerned about having a business in her back yard and how it would affect her property value.

Jim Reilly of 9 Boss Road states that because Mr. Shemick knows everyone in town, he wants to be sure that all the rules apply to him and there are no special favors.

Mr. Stockwell states that he lives very close to Mr. Shemick and always has his windows open at all hours. He hears nothing but general neighborhood noise. Also states that the noise that bothers him is when the State Police Academy, which is nearby, has target practice.

Robert Tate who is the area UPS driver states that Mr. Shemick gets no more deliveries than any one else in the neighborhood. Also states that he is there once a day or every other day.

Mr. Shemick states that in April 2007 he had put a central air system in his home may be the noise that the Fallens are hearing.

Mr. Bevilacqua states that there are at least two deficiencies in regards to this application and believes the building inspector did not advise the applicant of the different variances that were necessary. Suggests that the application be withdrawn and resubmitted.

Mr. Saccoccio states that we believe Mr. Shemick did not realize that under our zoning ordinance the building must be 100' back from the property line for your special use permit to be granted. We suggest that you withdraw this application and speak to legal counsel or we can go forward at this time, it is your decision.

Mr. Shemick states that he would like to withdraw his application at this time.

Mr. William Gibb makes a motion to accept the applicant's withdrawal of his application # 07-10 and advises him to seek legal council, Heidi Colwell seconds the motion. The following members voted:

William Gibb- Approve  
Scott Pollard- Approve  
Heidi Colwell-Approve  
Lori Mihailides- Approve  
Carl Saccoccio- Approve

### **Hearing # 07-11, Arthur and Beth Cabral, Plat 16 Lot 2**

Hearing #07-11, Arthur and Beth Cabral, Plat 16 Lot 2, East Killingly Road. Applicant is requesting a dimensional variance for 292' for frontage under Article IV, Section 13 A of the Foster Zoning Ordinance.

Arthur and Beth Cabral spoke in favor of their application stating the following

- They are trying to build a single family home.
- They live in Dayville, Connecticut and are originally from Rhode Island
- They have two small children and would like to be in the Foster school system

- They were under the impression when they purchased the property that they had 35' of frontage. After the survey was done is when they realized they only had 7' of frontage.
- Hardship is not a result of their part and there is no financial gain to be made we would like a home for our family.
- We did not sell off the property and make the shape of the lot, we purchased it this way.
- We will not change the general characteristics of the land. The relief requested is the least relief needed.
- If this relief is not granted the property can not yield the most beneficial use and is causing the hardship we are suffering to be more than a mere inconvenience.

Lisa Mills speaks in opposition of this application stating that her property abuts said property and says the last owners knew that they could not build a house on this property and that there is only 7' of frontage and would like to know how they would even get a driveway in that space.

David Cole an abutting neighbor and a real estate appraiser speaks in opposition of this application and states when he purchased his own property he did research the said property and knew that there was not enough frontage to be able to build.. Also states that granting this application would affect the property value of surrounding houses.

Donna Rathbun speaks in opposition of this application and states that she has a lot of children and is concerned about trucks and power lines encroaching on her property in the building process.

Rhonda Ortiz speaks in opposition of this application and states that she has a concern for her children's safety in the building process and she believes the applicants had to know about the frontage issue when they purchased the property.

Norma Garnsey speaks in opposition of this application and states that in order to build they would have to impose on other people's property. Also states that she has been on her property for over 40 years and had always known that the property was not build able.

Mr. Cabral states that the house would approximately 400' from the Mills house and 200' from the Rathbun house and he has children also and are very safe drivers. He also states that it is 8' of frontage at the road but 3' in it widens to 12'. Norbert Therian the surveyor was impressed with the sight, with the lay of the land. States he works for Verizon and is very familiar with wires and knows that it will not be an impact to run wires. Mrs. Cabral states that she did not know that the property was not buildable when they purchased it.

Mrs. Colwell states that she is concerned about Fire or Rescue trucks not being able to get onto the property.

Mr. Gibb's concerned that this is too extreme, that there is too little access, there would be no way for an ambulance or fire truck to get on to the property. He does not believe that there is a hardship.

Mr. Saccoccio states that under the zoning ordinance has to have a minimum of 14' of safety. He does not believe the Town of Foster has ever wavered such a large amount of frontage.

Mr. Gibb makes a motion to deny application number 07-11 under article 4 section 13 based on the extreme frontage variance requested and the safety concerns with insufficient access to the property. Mr. Pollard seconds the motion.

The following members voted:

William Gibb- Approve  
Scott Pollard- Approve  
Heidi Colwell- Approve  
Lori Mihailides- Approve  
Carl Saccoccio- Approve

The meeting adjourned at 9:10PM

Attest

Lori Mihailides  
Secretary