



**ZONING BOARD OF REVIEW
MINUTES OF THE OCTOBER 8, 2008 MEETING
TOWN OF FOSTER**

A. Call to Order:

The meeting was called to order at 7:00 p.m. by Chairman, Carl Saccoccio.

B. Roll Call:

Present were: Carl Saccoccio, Chairman; William (Bill) Gibb, Vice-Chairman; Paula Mottshaw, Secretary; Scott Pollard, Member; Tom Bargeon, Alternate; John J. Bevilacqua, Esq., Town Solicitor; Ann-Marie Ignasher, Town Planner; and Carole Malaga, Stenographer.

Absent were: Heidi Colwell, Member; Joseph Walsh, Alternate; and Robert Fallon, Building / Zoning Official.

C. Approval of Minutes:

No minutes were submitted for approval.

D. Correspondence and Communications:

None

E. Decisions – Review and Adoption:

F. Public Hearings:

Continued Hearings:

None

New Hearings:

Hearing Number: **08-07**

Applicants: **Henry & Pamela Chabot d/b/a Foster Bear Arms – Foster Bait Shack**

Landowners: Danielson Pike Realty, LLC

Subject Property: 52 Danielson Pike, Foster, RI

Assessor's Info: Plat 21 – Lot 0026

Zoning District: NC – Neighborhood Commercial

Relief Requested: Article IV Section 13(B) – Dimensional Requirements
Article VI Section 17(B) – Sign Regulations

The above application was made by Pamela Chabot and Henry Chabot (the applicants), Danielson Pike Realty, LLC (landowner) for the premises located at 52 Danielson Pike located within the Town of Foster, Rhode Island 02825 also known as tax assessor's plat 21 lot 0026.

1) Article IV; Section 13(b) Dimensional Requirements for NC Zoning District – For the Foster Bear Arms Building, requesting 78 feet of relief from the eastern side yard requirements. For the Foster Bait Shack, requesting 7.5 feet of relief from the rear yard requirements, and 39.5 feet of relief from the front yard requirements.

2) Article VI, Section 17(B) Sign Regulations – For the signs, requesting relief from the number of signs allowed, as well as the total square footage of signage allowed, as there are two businesses on the site.

The applicants appeared before the zoning board to request the above relief in order to resolve some of the issues listed on the Notice of Violation Number 21-0026-07-21-2008. The applicants also appeared before the zoning board under the requirements as set forth in that planning board decision made August 20, 2008.

The following people spoke either for or against the application:

- 1) Pamela Chabot, the applicant
- 2) Ann-Marie Ignasher, Town Planner
- 3) Constance Polouski, an abutter
- 4) Michael Polouski, an abutter,
- 5) Cheryl Wright, an abutting landowner

The following documentation, reports, and exhibits were entered into the record as evidence at the hearing:

F. Public Hearings (con't):

New Hearings (con't):

- 1) The completed application
- 2) Copy of the advertisement as it appeared in the Valley Breeze and Observer
- 3) Copy of the notification to the abutter; the certified mailing cards, and the return receipt cards
- 4) Tax Assessor's Map with the notification area outlined
- 5) Certification of the lot as a substandard lot or record under our zoning ordinance
- 6) Site plan
- 7) Copy of the Notice of Violation 21-0026-07-21-2008
- 8) Copies of prior zoning board decisions regarding this lot
- 9) Copies of the landowner's warranty deed into the real estate
- 10) Portions of the Planning Board Decision dated August 20, 2008 that were read into the record by the Town Planner
- 11) The following exhibits were also entered into the record as evidence:
 - Exhibit No.: 1 Colored photo showing the dead section of arborvitae owned by the Polouski's. The trees are located along the eastern boarder of the real estate.
 - Exhibit No.: 2 One sheet containing three colored photos showing the same dead section of trees from different angles.
 - Exhibit No.: 3 Black and white photo showing the back of the Foster Bear Arms with signs.
 - Exhibit No.: 4 Black and white photo showing the front of the Foster Bear Arms with signs.
 - Exhibit No.: 5 Black and white photo showing the front of the Foster Bait Shack with signs. (NOTE: The two signs X'ed out have been removed sing the date of the pictures)

General Testimony:

Pamela Chabot, the applicant had no opening statement regarding her application. She did; however, give testimony later in the proceedings in response to the general testimony.

Constance Polouski, an abutter to the real estate, spoke against the application. Her concern was that several of her arborvitae trees were killed due to the action(s) of the applicant and her husband. The damage to the trees was discovered once a large trailer was moved off of the site; the trailer had been parked near the eastern boundary line of the site next to the trees. She also had concerns about the free standing sign at the front of the lot that was lit internally, and the flower box surrounding the sign. Finally, she mentioned her concern regarding the flood light that was upon a large pole on the site that shines upon her residence.

Cheryl Wright, the owner of another abutting parcel of real estate, spoke against the application. Her main concern was no more signs – there are too many signs. She also commented that placement of certain signs could interfere with a safe exit from the lot.

Mike Polouski, an abutter to the subject real estate, spoke against the application. He claimed that the applicants had not followed proper zoning requirements – he mentioned the flower box surrounding the internally lit sign. He also stated that the large flood light on the site shines upon his residence at night.

There was some discussion between the zoning board members and the town solicitor regarding the current status of the business license for Foster Bear Arms / Foster Bait Shack. The board was told that the license was placed on probation; however the business is allowed to remain open until December 31, 2008 provided the applicant move forward to correct noted violations and appear before both the zoning board to request the proper variances and the planning board for a commercial site review. The Solicitor went on to inform the zoning board that the applicants have taken down quite a few signs, and has made a good faith effort to “clean the place up”.

Ann-Marie Ignasher, Town Planner, discussed prior actions taken by the planning board, and she reviewed the notice of violation issued by the zoning official and told the zoning board which items were already, or in the process of, being corrected.

- 1) Lack of approved site plan – A proper site plan cannot be approved by the planning board, until the zoning board makes it decisions regarding the requested relief.
- 2) Addition to bait shack – This is one of the reasons the applicant is before the board tonight, to receive relief from the rear yard set back requirements.
- 3) Trailers – There were two trailers on the site; however the large trailer parked along the easterly boarder of the real estate has been moved. The smaller trailer directly against the building is part of the requested relief the applicant is seeking tonight.
- 4) Signage – As there are two businesses located upon this site, the applicant is before this board this evening to seek relief from the requirements under the zoning ordinances.

F. Public Hearings (con't):

New Hearings (con't):

5) Floodlight – Though this is not part of the formal application before the board, two abutters have already mentioned that the floodlight illuminates their residence at night. The planner has already talked to the applicant and the applicant is willing to correct the situation as needed.

6) Chicken coop / Bird Cage – there was a large chicken coop / bird cage located between the Foster Bait Shack and Foster Bear Arms buildings and that cage was removed by the applicant prior to her appearance before the zoning board tonight.

7) Handicapped Parking (Space) – Prior to the date of the hearing, the bush was trimmed and the birdcage (small) was removed from the parking space.

8) Dumpster – The dumpster was moved, prior to the date of the hearing, from the front parking lot to a more shielded location at the back of the lot behind a corner of the Foster Bear Arms building.

9) Entry Way to the Gun Shop – The entry way was never suppose to be fully enclosed, as it was just suppose to be an overhand to protect the entryway / doorway during a rain storm. The applicant never pulled a building permit for the enclosure. The entryway is now part of this application, regarding the dimensional variance from the side yard set back requirement.

The planner entered black and white photos of the signage as Exhibits 3, 4, and 5.

Pamela Chabot, the applicant, testified regarding her application. The railroad ties around the signage in the front of the lot were placed there to protect the sign from cars, and to make it look more appealing. She agreed that the floodlight could / should be timed to match the hours of business operation; however, since the business is one regarding the sale of firearms that some sort of security lighting would be mandated. The reason for enclosing the alcove was due to the reports that kids were going there at night and using the location for partying, and at one time the applicants found a homeless person using the alcove as a shelter on various nights; therefore, due to the type of business they believed it would be best (security wise) to fully enclose the alcove with a locked door that could be unlocked and opened during the hours of operation.

There being no further testimony offered, the Chairman Carl Saccoccio closed the public hearing at 7:50 p.m., and the zoning board began its deliberations.

Zoning Board Deliberations:

Discussion centered on prior permits issued to the applicant regarding the Foster Bear Arms and a second permit for the Foster Bait Shack, thus two businesses were allowed to co-exist on one site that was certified as a substandard lot of record.

Comments were made regarding the notice of violation previously issued by the building / zoning official, and not everything on the violation has been resolved.

Scott Pollard asked the Town Solicitor that if the applicant is still in violation of some of issues mentioned above, should the zoning board even be considering the applicant's request for the variances. The Solicitor said yes, that the agreement between the applicant and town council regarding the license granted to the applicant giving them the opportunity to respond to the violations and to attempt to correct them by requesting variances, etc.

Carl Saccoccio reminded the board that the lot was a non-conforming lot, that there is a pre-existing building located upon it and that the pre-existing building did not conform to the rear yard set back requirements; and therefore, the relief requested from the rear yard set back for the 6'x18' addition to the Bait Shack would not encroach on that particular set back any more than the original pre-existing building that houses Foster Bear Arms.

Discussion occurred that the relief sought from the front yard set back requirement was requested for the handicapped ramp located at the front of the Bait Shack, and that the Bait Shack itself had already been approved by prior boards. A board member questioned whether other applicants had appeared before the board requesting relief to accommodate handicapped ramps.

Discussion continued regarding the signage as the ordinance regarding signage was confusing to some. Carl Saccoccio stated that each business was allowed up to 60 square feet of signage, and therefore both Foster Bear Arms and Foster Bait Shack could have up to 60 square feet of signage each; however, the two businesses cannot say one building will have 90 square feet of signage and the other have only 30. It has be 60 square feet or less for each business.

F. Public Hearings (con't):

New Hearings (con't):

Though the damage to the neighbor's trees was not a part of the application, the Town Solicitor told the board that they could put some sort of restriction upon the applicant regarding the trees as the issue was brought to the board's attention by an abutter testifying before the board, and evidence of the damage (pictures entered as exhibits) was presented to the board, so the issue is within their purview as the damage referred to appears to have been caused by the larger trailer, now removed, that was located upon the site and was in violation of the zoning ordinance.

The same held true for the issue of the lighting, as it shined in the abutter's yard and residence. The board could place some sort of restriction, or condition upon the lighting of the site. The

board was reminded that some sort of security lighting would be necessary due to the nature of the business of Foster Bear Arms.

Scott Pollard commented that he did not believe that the applicant met her burden of proof, without any testimony on record the applicant failed to prove that she deserves these variances.

In response to this, another board member reiterated that the lot in question was a substandard lot of record, and there had been other businesses on the lot and due to the lot's unique nature (substandard in size, etc) even the prior owners found it necessary to request and receive dimensional variances. It was also reiterated that prior planning boards and zoning boards allowed two separate businesses to be located upon one (substandard) lot and granted dimensional relief due to the character of the lot.

No further comments were made.

Findings of Fact and Conclusions of Law:

After consideration of the application, the testimony of the witnesses and all of the evidence presented to the Board with the application and at the hearing, and after carefully considering all the information the Board makes the following findings of fact and conclusions of law:

The Board finds that it has jurisdiction to hear and consider this matter under Article VII, Subsection 1 of the Zoning Ordinance for the Town of Foster, Rhode Island.

Therefore, due to the unique characteristics of the lot being a substandard lot of record; board members made the following motions:

RE: Foster Bear Arms Building: William Gibb made a motion to approve the dimensional relief / variance requested by the applicants Henry & Pamela Chabot d/b/a Foster Bear Arms/ Foster Bait Shack from Article IV, Section 13(b) Dimensional Requirements for an NC zoning district more specifically a) requesting 78 feet of relief from the eastern side yard requirements for the alcove entrance way, and the small storage behind the alcove of the Foster Bear Arms.

The following conditions shall apply:

1. The applicant must comply with Article VI, Section 17(B) Sign Regulations; each business located at the site will be allowed only 60 square feet of signage each.
2. The exterior flood light shall only be used during regular business hours of 10:00 a.m. to 6:00 p.m. The business (es) will be allowed to use proper security lighting during the remainder of the evening and early morning hours.
3. The applicant must agree to the tree damage issue being reviewed and addressed by the Foster Tree Warden, who will have the responsibility to make a determination about the trees. The tree warden shall put forth criteria which will be followed by the applicant.

Carl Saccoccio seconded the above motion.

There was no further discussion.

Members voting to approve: Carl Saccoccio, William Gibb, Paula Mottshaw, Tom Beargeon.

Member voting to deny: Scott Pollard

Members abstaining: None

Members absent: Heidi Colwell

Motion passes: 4 to 1

F. Public Hearings (con't):

New Hearings (con't):

RE: Foster Bait Shack Building: William Gibb made a motion to approve the dimensional relief / variance requested by the applicants Henry & Pamela Chabot d/b/a Foster Bear Arms / Foster Bait Shack from Article IV, Section 13 (B) Dimensional Requirements for an NC zoning district more specifically a) requesting 7.5 feet of relief from the rear yard requirements, b) 39.5 feet of relief from the front yard requirements.

The following conditions shall apply:

1. The applicant must comply with Article VI, Section 17(B) Sign Regulations; each business located at the site will be allowed only 60 square feet of signage each.
2. The exterior flood light shall only be used during regular business hours of 10:00 a.m. to 6:00 p.m. The business (es) will be allowed to use proper security lighting during the remainder of the evening and early morning hours.
3. The applicant must agree to the tree damage issue being reviewed and addressed by the Foster Tree Warden, who will have the responsibility to make a determination about the trees. The tree warden shall put forth criteria which will be followed by the applicant.

Carl Saccoccio seconded the above motion.

There was no further discussion.

Members voting to approve: Carl Saccoccio, William Gibb, Paula Mottshaw, Tom Bargeon.

Members voting to deny: Scott Pollard

Member abstaining: None

Members absent: Heidi Colwell

Motion passes: 4 to 1

RE: Article VI, Section 17(B) Sign Regulations: The applicants had requested relief from the number of signs allowed on the site, as well as the total square footage of the signs. Per the conditions listed above it is clear the zoning board is not granting any relief from the sign regulations. It is noted however, that since there are two businesses on the premises then each business is allowed up to 60 square feet of signage, no more.

Conclusions

Therefore, the applicants' requests have been approved in part and denied in part as stated above.

G. Zoning Board of Appeals Will Convene to Hear the Following Appeals:

None

H. Future Agenda Items:

I. Adjournment:

William Gibb moved to adjourn, seconded by Scott Pollard; therefore the meeting was adjourned at 8:30 p.m.

Respectfully Submitted,

_____/s/Ann-Marie Ignasher_____

Ann-Marie Ignasher,
Town Planner, Foster, RI

__November 13, 2008_____

Dated