



**ZONING BOARD OF REVIEW
MINUTES OF THE JUNE 10, 2009 MEETING
TOWN OF FOSTER**

A. Call to Order

The June 10, 2009 meeting of the Foster Zoning Board of Review came to order at 7:00 pm in the Benjamin Eddy Building.

B. Roll Call

Present were; Carl Saccoccio, Chairman; John J. Bevilacqua, Esq., Town Solicitor; William (Bill) Gibb, Vice-Chairman; Paula Mottshaw, Secretary; Heidi Colwell; Joseph Walsh; Tom Bargeon, Alternate; Maureen McEntee, Alternate; Robert Fallon, Building/Zoning Official; Carole Malaga, Stenographer.

C. Approval of Minutes

Motion to approve the minutes of May 13, 2009 was made by Bill Gibb; Heidi Colwell seconded.

All members voted to approve – Motion passed.

D. Correspondence and Review

None

E. Hearings Discussion and Decision – 09-06

Applicant: P&D Properties, LLC
Landowner: Philip Reynolds
Subject Property: 10 Plainfield Pike
Assessor's Info: Plat 19 Lot 35
Zoning District: Agricultural / Residential
Requesting: Special Use Permit

Bill Gibb made a motion to continue the application to the July 2009 zoning board meeting. The motion was seconded by Joe Walsh. All approved; motion carried.

Hearings Discussion and Decision – 09-04

Applicant: Gordon Rogers
Landowner: Gordon Rogers
Subject Property: 162A Danielson Pike
Assessor's Info: Plat 10 Lot 37
Zoning District: Highway Commercial and Agricultural Residential
Requesting: Special Use Permit Under: Article IV, Section 7, Subsection 17

Application: Mr. Rogers presented his application for a special use permit to operate a farmers' market to include retail sales in an open lot. (Article IV, Section 7, Subsection 17). He stated that he owned the real estate upon which the farmers' market would be, and he informed the board how he was improving the business that is already located at that site. The farmers' market would be located in the lower parking lot of the motel, and he stated it would benefit the Foster community.

Interested Parties: Several people spoke in favor of the application, all were supportive of a local farmers' market and how a farmers' market would be good for the town, the local farmers and local crafts people. People testified that a farmers' market would make a good impression on people travelling along Route 6, and having a market on Route 6 gives local farmers high visibility that they may not get elsewhere.

Mr. Tom Holliwell testified that he was working with Mr. Rogers to develop a set of by-laws for the farmers' market, and create a management team model for the market. Mr. Holliwell testified to the extensive research he did on farmers' market to help Mr. Rogers with the development of this particular market model.

No one spoke in opposition to the proposal.

Board Discussion: During the board's discussion of this application a letter from the Foster Zoning Official, Bob Fallon, to Gordon Rogers, dated April 7, 2009 was read into the record by the Town Solicitor. After the reading of the letter, the board has some discussion regarding other items that could be considered retail sales but would not be proper to sell at a farmers' market atmosphere; for example, racks of sunglasses, canned goods, used items, prepackaged items, and the extreme example of "gold fringed, black velvet painted pillows". The applicant Mr. Rogers agreed that those items mentioned were geared towards a flea market and not a farmers' market.

Another board member discussed the possibility of local farmers requesting the ability to sell their meat products at the market. Mr. Rogers and Mr. Holliwell testified that if a farmer requested to sell "cuts of meat" at the market, there must be a USDA certification of the meat, and that the farmer would have a representative at the market taking orders and the meat would be either delivered or picked up at a later time, as a farmers' market does not have the proper facilities for such sales.

Further discussion was held regarding the actual sales time for the farmers' market – board members discussed the possibility of allowing the market to be open on Saturdays, Sundays and Holidays. Though that is not what Mr. Rogers was requesting at this time, the board felt that as the market grew in popularity then the additional hours would allow the market to expand its hours of operation without necessarily having to go back before the zoning board. Therefore, the board felt that hours of operation should be set at 7:00 a.m. to 7:00 p.m. on Saturdays, Sundays, and Holidays during the farm season – early spring to late fall.

More discussion regarding retail sales – to limit retail sales to those items listed in Mr. Fallon's letter of April 7, 2009 and to include local handcrafted items, small craft items from community organizations – for example such as schools, athletic teams, boy Scouts / Girl Scouts – for fundraisers.

Mr. Gibb asked Mr. Rogers if he has received a copy of Mr. Fallon's letter dated April 7, 2009 – Mr. Rogers responded that he had.

Mr. Gibb asked Mr. Rogers if he had any problems with any of the conditions in Mr. Fallon's letter of April 7, 2009 – Mr. Rogers responded that he did not.

Findings of Fact and Conclusions of Law: After consideration of the application, the testimony of the applicant 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:

- 1) The board finds that it has jurisdiction to hear and consider this matter under Article VII, Sections 1 and 2 – Issuance of Variances and Special Use Permits - of the Zoning Ordinance for the Town of Foster, RI.
- 2) That the granting of the special use permit will enhance the general character of the surrounding area and not impair the intent or purpose of the zoning ordinance or the comprehensive plan of the Town, nor have a negative impact upon the environment.
- 3) That a farmers' market is an allowed use under the Foster zoning ordinance under Article IV, Section 7, Subsection 13.

4) That retail sales in an open lot does require a special use permit under the Foster zoning ordinance, under Article IV, Section 7, Subsection 17.

A motion was made by William Gibb to approve the special use permit applied for at hearing #09-04 to use the premises located a 162A Danielson Pike, Foster, RI, Plat 10 Lot 0037, for the operation of a farmers' market, to include retail sales in an open lot as a special use permit under the Foster zoning ordinance under Article IV, Section 7, Subsection 17. With the following conditions:

1) That the conditions listed in the Foster Zoning Official's letter to Gordon Rogers dated April 7, 2009 are incorporated herein, unless otherwise stated to the contrary – a copy of that letter will be attached to the recorded decision and will be incorporated therein.

2) That the operating hours of the farmer's market will be Saturdays, Sundays and holidays from 7:00 a.m. to 7:00 p.m. from the early spring to late fall.

3) That no permanent structures will be allowed o be built at the farmers' market site, and that all canopies, tents, tables, stands, signs, and all debris must be removed from the location of the market at the end of each weekend and the end of the season.

4) That a minimum buffer strip of thirty (30) feet be maintained between the farmers' market area and the edge of the highway (Route 6) – therefore, no canopy, tent, or stand etc. can be set up within that buffer zone of thirty (30) feet.

5) That the retail sales items, shall be limited to the following: hand made crafts by local artisans; home made products such as jams, jellies, and pies; stock purchased from a commercial nursery or other farmers at wholesale prices that are brought to the market to be re-sold at retail prices; small craft items to be sold by community organizations, as listed above may be sold as fundraisers for the organizations.

6) Nothing is to be sold at the farmers' market that is mass produced, or commercially sold – such as sunglasses, prepackaged games, etc. as examples.

7) Meat may be sold provided the meat is USDA certified and sold in the manner listed above.

Motion was made by William Gibb, and seconded by Joseph Walsh.

Members voting in the affirmative: Joseph Walsh, Paula Mottshaw, William Gibb, Heidi Colwell and Carl Saccoccio.

Members voting in the negative: None

Motion passes 5 to 0.

Hearings Discussion and Decision – 09-03

Applicant:	Pamela Tessitore
Landowner:	Pamela Tessitore
Subject Property:	93 Moosup Valley Road
Assessor's Info:	Plat 1 Lot 37
Zoning District:	Agricultural / Residential
Requesting:	Special Use Permit – Under Article IV, Section 1, Subsection 4 – Commercial Nursery structures

Application: The applicant and owner, Pamela Tessitore presented the application for a special use permit for the operation of a greenhouse for the growing and selling of plants, including plants purchased from other growers (Article IV, Section 1, Subsection 4). The property is located at the corner of Cucumber Hill Road, and Moosup Valley Road. The lot contains approximately 4.59 acres of real estate, and

contains Ms. Tessitore's residences and the greenhouse. The board recognized that Ms. Tessitore already has the right to sell plants that she herself grows; however, the special use permit will allow her to purchase nursery stock from other growers and sell that nursery stock from her green house. Ms. Tessitore uses no commercial fertilizers and she harvests rainwater for the watering of her plants / nursery stock. The board also learned that Ms. Tessitore has been recognized for her design work using her plants within the natural and built environment. Ms. Tessitore has designed rain gardens and roof gardens throughout the region. Her business is licensed by the State and therefore she and her plants must meet certain State criteria. Ms. Tessitore deals with a select group of growers to make sure the criteria is met and maintained.

Interested Parties: Several people spoke in favor of granting this special use permit. In support of their views people told the board that the real estate has been much improved ("it is gorgeous") since Ms. Tessitore has owned the parcel; that this is the type of business the Foster community will welcome as it fits within the character of the Town; that the type of sustainable living (design work) Ms. Tessitore does is important in this day and age.

No one spoke in opposition to the proposal.

Board Discussion: There was some discussion regarding the delivery of the nursery stock to the property location – Tom Holliwell, Ms. Tessitore's business partner explained that they deal with a limited number of suppliers and that they themselves go to the suppliers and pick up the nursery stock themselves.

Discussion regarding hours of operation – Ms. Tessitore explained that at present she works at the greenhouse on weekends only; however, there maybe a time where she can work at the greenhouse on a full time basis. As Ms. Tessitore does live on the property in question – the board determined that the hours of operation of the business should be reasonable normal business hours.

Findings of Fact and Conclusions of Law: After consideration of the application, the testimony of the applicant 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.

- 1) The board finds that it has jurisdiction to hear and consider this matter under Article VII, Sections 1 and 2 – Issuance of Variances and Special Use Permits - of the Zoning of the Ordinance for the Town of Foster, RI.
- 2) The granting of the special use permit will not alter the general character of the surrounding area nor impair the intent or purpose of the zoning ordinance or the comprehensive plan of the Town, and have no negative impact on safety issues or environmental issues.
- 3) The board recognized that Ms. Tessitore already has the right to sell the plants and nursery stock that she herself grows without a special use permit.
- 4) That the special use permit, if granted, would allow Ms. Tessitore to purchase nursery stock from other growers and sell that nursery stock from her greenhouse.
- 5) That the granting of the permit will allow a small, Foster-based business to thrive, even within the existing economy.

A motion was made to approve the special use permit applied for at hearing #09-03 to use the premises located a 93 Moosup Valley Road, Foster, RI, Plat 1 Lot 37 for the operation of a greenhouse (commercial nursery), for the growing and selling of plants and flowers, including plants purchased from other growers. (Article IV, Section 1, Subsection 4).

The following conditions must be followed:

1. The business will be limited to nursery related products; and
2. That the hours of operation of the business must be reasonable, normal business hours.

The Motion was made by William Gibb, and seconded by Joseph Walsh.

Members voting in the affirmative: Joseph Walsh, Paula Mottshaw, William Gibb, Heidi Colwell and Carl Saccoccio.

Members voting in the negative: None.

Motion passes 5 to 0.

Hearings Discussion and Decision – 09-05

Applicant: Laurence Costa-Mello
Landowner: Laurence Costa-Mello
Subject Property: 7 Rickard Road
Assessor's Info: Plat 10 Lot 0040
Zoning District: Agricultural / Residential
Requesting: Special Use Permit – Under Article IV, Section 12, Subsection 2 – and – Article IV, Section 1, Subsection 7

Letter from Building / Zoning Official: Before the applicant presented his application, the Chairman requested that the Secretary read into the record a letter from the Town's Building Zoning Official, dated March 10, 2009 that was sent to Mr. Laurence Costa-Mello regarding the 30' x 50' accessory structure. Though the structure is an accessory structure there is no primary use / structure located on that particular lot; and that any structure exceeding 64 square feet or more requires a building permit under the state statutes.

Application: Mr. Laurence Costa-Mello presented his application for a special use permit that would allow him to keep the accessory structure (30' x 50') on the real estate that has no primary purpose or structure. Mr. Costa-Mello states that he uses it to store the feed for his animals. Further, he stated that his family has been farming for over 150 years. According to Mr. Costa-Mello the structure cannot be seen from the road.

Interested Parties: Other family members spoke in favor of the structure and the family farm, Denise Costa-Mello re-iterated the length of time the family has been running a family farm, she stated that the accessory structure was within walking distance from the private residence and that she hoped the board would approve the application. Laurence Costa-Mello (Sr.) said that he uses the structure most of the time, and that it is within walking distance from his home (he broke his back in 1998), and that the structure is used for the storage of feed for the animals and that there is no seepage from the structure.

Those in opposition: - Several neighbors of the Costa-Mellos spoke out against the request. Those speaking out against the application stressed that the building is 1500 square feet, a large accessory building by their standards. Someone testified that the Costa-Mellos were running a trucking business and a disposal business, as well as a farm. There were questions as to how long the structure has been around without permits; concerns about the health and safety of the local wells, water, aquifer, and land; is there or was there toxic / hazardous waste on the property; just how many pigs do they have; has RI DEM or EPA done any inspections on the site? What else is going on at this site that the town or neighbors don't know about?

The hearing was closed.

Board Discussion: During the board's discussion board members reiterated to the public that the only item before the board was the accessory structure (30' x 50'), and that the other issues (health and safety of the local wells, water, aquifer and

land and toxic / hazardous waste) were outside the jurisdiction of the zoning board of review. The Chairman Carl Saccoccio read the wording of Article IV, Section 12, Subsection 2 (page 20 of zoning ordinance) -..."Any use customarily incident to a use permitted in the district as a special use permit and located on the same lot." Chairman Saccoccio then stated that this had already been interpreted by the Courts in Rhode Island to mean that you cannot have an accessory structure on a parcel of land without having a main use (often a residence) on the real estate. The Town Solicitor John Bevilacqua cited Article IV, Section 1, Subsection 7 (page 15 of zoning ordinance) that the only time an accessory structure would be allowed without a primary or main structure would be if the structure was not more than 200 square feet nor less than 120 square feet, it had to be wooden and not for the purpose of housing animals. This particular section was put into the zoning ordinance for the benefit of tree farmers so they could have protection during the winter months.

Chairman Saccoccio stated that the request before the board can not be granted under our current ordinance – as there is no primary use on the property, therefore if an accessory building were to be permitted it had to be less than 200 square feet, and not 1500 square feet.

William Gibb then suggested that maybe the applicant should be applying for a variance from the zoning ordinance and not a special use permit. The Town Solicitor and the Chairman both agreed with Mr. Gibb.

The Town Solicitor, John Bevilacqua made the following recommendation to the zoning board – that they consider allowing the applicant, if the applicant so chose, to withdraw the current application before the board from consideration, without prejudice, and thereby the applicant could promptly re-apply to the board using the proper request for relief.

It was clarified by the board that if the applicant did not withdraw the application, without prejudice, that the board would have no alternative but to deny the request and then the applicant would be restricted by the denial – in other words the applicant would have to wait for a particular amount of time before they were allowed to re-apply to the board, and that the circumstances (request) would need to be substantially different.

The applicant was questioned as to his choice, and the applicant chose to request that he be allowed to withdraw his application before the board without prejudice, thereby allowing him the opportunity to re-apply using the appropriate requested relief.

William Gibb made the motion to allow the applicant to withdraw his application before the board without prejudice, and thereby allowing the applicant the opportunity to re-apply using the appropriate requested relief.

Joseph Walsh seconded the motion.

Members voting in the affirmative: Joseph Walsh, William Gibb, Paula Mottshaw, Heidi Colwell, and Carl Saccoccio.

Members voting in the negative: None.

The Motion passes 5 to 0.

M. Adjournment

William Gibb moved to adjourn the June 10, 2009 Foster Zoning Board of Review meeting.

Respectfully submitted by: _____/s/ Paula Mottshaw_____
Paula Mottshaw, Secretary