



**ZONING BOARD OF REVIEW MEETING MINUTES
TOWN OF FOSTER
Benjamin Eddy Building, 6 South Killingly Road, Foster, RI
Wednesday: April 14, 2010 AT 7:00 p.m.**

A. Call to Order

The meeting was called to order at 7:03 p.m. by the Chairman Carl Saccoccio.

B. Roll Call

The following Zoning Board Members were in attendance: Alternate, Maureen McEntee; Members Joseph Walsh, Heidi Colwell, Carl Saccoccio (Chairman), William Gibb (Vice-Chairman) and Paula Mottshaw (Secretary). Also in attendance were the Town Solicitor, John Bevilacqua, Esq., the Town Planner, Ann-Marie Ignasher, and the Stenographer, Carol Marlaga.

C. Approval of Minutes

February 17, 2010 – Heidi Colwell made a motion to approve the minutes as written; Joseph Walsh, seconded. There was no further discussion on the motion. The motion passed 5 to 0.

E. Correspondence and Communications

Planning Guidance Memo – Entered as received for informational purposes.

F. Decisions – Review and Adoption

None

G. Public Hearings

Hearing #10-02-01 – Wayne & Kathleen Carrington

Address: 66 Foster Center Road, Foster, RI – Plat 09 Lot 0011A

Requested Relief: Requesting relief from the Foster Zoning Ordinance Article IV, Section 13

Dimensional regulations; more specifically, requesting relief from the minimum side yard depth of 50 feet down to 25 feet (for 25 feet of relief) for the citing of a 12' X 24' garage.

PUBLIC HEARING OF THE PETITION

Mrs. Carrington appeared before the Zoning Board to request relief from the dimensional set back requirements of the zoning ordinance for her 12' x 24' garage. The garage was built some years ago, however, a permit to build the garage was never requested, and Mrs. Carrington recently received a notice from the Building / Zoning Official notifying her of the situation, and during discussion with the Building Official she was notified of what corrective measures were required.

Attorney Jane Gurzenda represented Mrs. Carrington during the hearing. Mrs. Carrington testified to the circumstances surrounding the placement of the garage on her real estate, the site for the garage was chosen due to the geographic layout of the site. Mrs. Carrington also testified to the impact of trying to move the garage, where the location of the garage would be if she was to follow the set back requirements and the danger of backing down her driveway onto Foster Center Road. A neighbor Katherine Hopkins testified that she lived next door to the Carringtons for over 10 years, and she did not have a problem with the location of the garage, nor did she have a problem with the variance being granted.

Interests of Others:

The following people spoke either for or against the application:

A neighbor Katherine Hopkins testified on behalf of the application.

Another neighbor, Mr. Paul Dinwoodie, questioned which boundary set-back line the Carrington's were requesting relief from – he wanted to know if it was the boundary line between his property and the Carrington's (towards the back of the lot).

Zoning Board Comments:

It was noted that Mrs. Carrington referred to the shed as a garage, and when it was verified that the building was indeed used as a garage, the Chairman commented that the set back requirement for a garage is only 50 feet not 100 feet. Therefore, it was requested that Mrs. Carrington approach the table and correct her original request in the file. Mrs. Carrington corrected the application and the Town Solicitor witnessed the change. There was also a question from a board member regarding the permit for the building being resolved – it was noted that when Mrs. Carrington went to Town Hall to get the permit, that is when it was discovered she would need to appear before the Zoning Board to request relief from the dimensional requirements.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the application, the testimony of the applicant / owner, and any other 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:

1. The board finds that it has jurisdiction to hear and consider this matter under Article VII, Section 1 – Issuance of Variances and Special Use Permits of the Zoning Ordinance for the Town of Foster, Rhode Island.
2. That the Applicant was properly before the board to request relief from Article IV, Section 13, Dimensional Requirements, more specifically side yard set-back requirements.
3. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and is not due to a physical or economic disability of the applicant;

4. That the granting of the requested variance will not alter the general character of the surrounding area nor will it impair the intent or purpose of the zoning ordinance,
5. That relief to be granted is the least relief necessary;
6. In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere convenience.

Based upon the above findings of fact, the Board finds that the Applicant has met its burden of proof with respect to the application and therefore;

Motion to Approve:

William Gibb made a motion to approve the application 10-02-01 for Wayne and Kathleen Carrington of 66 Foster Center Road, a/k/a tax assessor's plat 09, lot 0011-A requesting relief from the Foster Zoning Ordinance Article IV, Section 13, Dimensional regulations; more specifically, requesting relief from the minimum side yard depth of 50 feet down to 25 feet (for 25 feet of relief) for the existing garage that has been in place for almost 10 years.

Condition(s) of Approval

The following conditions were placed upon this application and are incorporated into this decision:

- 1) That the building inspector must verify that the building code was met regarding the construction of the garage.

Joseph Walsh seconded the above motion. There was no further discussion.

Members voting to approve: Joseph Walsh, Heidi Colwell, William Gibb, Paula Mottshaw and Carl Saccoccio.

Members voting against: None

Motion Passes: 5 to 0.

Hearing #10-03-01-Z – John K. Savoy

Address: 51 A Plainfield Pike, Foster, RI – Plat 09 Lot 0005A

Requested Relief: Requesting relief from the Foster Zoning Ordinance Article IV, Section 13 Dimensional Regulations; more specifically, requesting relief from the minimum side yard depth of 50 feet to 23 feet and relief from rear yard setback of 100 feet to 40 feet for the citing of a wood shed, and relief from side yard depth of 50 feet to 25 feet and relief from rear yard setback of 100 feet to 27 feet for the citing of a tool shed.

PUBLIC HEARING OF THE PETITION

Mr. Savoy appeared before the Zoning Board to request relief from the dimensional set back regulations, more specifically, to request relief from the minimum side yard depth of 50 feet to 23 feet and relief from the rear yard set back of 100 feet to 40 feet for the siting of a wood shed, and relief from the side yard depth of 50 feet to 25 feet and relief from rear yard setback of 100 feet to 27 feet for the siting of a tool shed. During his presentation, Mr. Savoy stated that both sheds were approximately 700 feet in off the road, and not visible from the road. One shed is used to store wood for an internal wood stove in his home, and the other is storage for equipment. The Town Planner showed aerial photographs of the real estate to show the board members the location of the two sheds in relationship to the residence, each other, and the boundary lines.

Interests of Others:

The following people spoke either for or against the application:

(*)No-one else spoke either in favor or against the application before the board.

Zoning Board Comments:

Zoning Board members made note of the location of the two sheds, and that they were indeed well off the road, and probably not visible from the road, nor from the neighbors. Realized that it would be a great inconvenience for Mr. Savoy to try to relocate the sheds on the property; also, the board was aware that other family members had to use the sheds also and location of the sheds to the residence was reasonable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the application, the testimony of the applicant / owner, and any other 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 act and conclusions of law:

1. The board finds that it has jurisdiction to hear and consider this matter under Article VII, Section 1 – Issuance of Variances and Special Use Permits of the Zoning Ordinance for the Town of Foster, Rhode Island.
2. That the Applicant was properly before the board to request relief from Article IV, Section 13, Dimensional Regulations – from minimum side yard depth, and rear yard depth
3. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant;
4. That the granting of the requested variance 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 the ordinance is based;
5. That relief to be granted is the least relief necessary;
6. In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere convenience;

Based upon the above findings of fact, the Board finds that the Applicant has met its burden of proof with respect to the application and therefore;

Motion to Approve

William Gibb made a motion to approve the application 10-03-01-Z for John K. Savoy, of 51A Plainfield Pike, Foster, RI, a/k/a tax assessor's plat 09, lot 0005-A for requesting relief from the Foster Zoning Ordinance Article IV, Section 13, Dimensional Regulations; more specifically, requesting relief from the minimum side yard depth of 50 feet to 23 feet and relief from rear yard setback of 100 feet to 40 feet for the siting of an existing wood shed, and relief from side yard dept of 50 feet to 25 feet and relief from rear yard setback of 100 feet to 27 feet for the siting of an existing tool shed.

Condition(s) of Approval

(*) The following conditions were place upon this application and are incorporated into this decision: 1) the applicant is to see the Building Inspector next month to complete the permit process.

Joseph Walsh seconded the above motion. There was no further discussion on the motion.

Members voting to approve: Joseph Walsh, Heidi Colwell, William Gibb, Paula Mottshaw and Carl Saccoccio.

Members voting against: None

Motion Passes: 5 to 0.

Hearing #10-03-02-Z – Brian E. Carpenter (Applicant) & Marlene M. Manchester (L/Owner)

Address: Old Danielson Pike, Foster, RI – Plat 22 Lot 0044 – Substandard Lot of Record

Relief Requested: Requesting relief from Article VI, Section 6, Supplementary Regulations for Sewerage Disposal set back requirement, and Article V, Section 1 for a sub standard lot of record under (non conforming use substandard lot of record). More specifically, requesting permission to keep the leaching field for the septic system 55' off the easterly property line, 90' off the westerly property line & 44' off the rear property line.

PUBLIC HEARING OF THE PETITION

Mr. Carpenter presented the application. After being sworn in he noted that the house did not require any relief from the set-back requirements – it was just the septic / OWTS system that needed relief, as the lot is a substandard lot of record.

The applicant, Brian Carpenter, went before the Zoning Board to request relief from the sewerage disposal set back requirements for a substandard lot of record that is zoned agricultural / residential. The OWTS is to service a one family residence the owner, Marlene Manchester, wishes to construct on the real estate. They are requesting permission to keep the leaching field for the septic system 55 feet off the easterly property line, 90 feet off the westerly property line and 44 feet off the rear property line. The area surrounding the parcel is all residential.

Interests of Others:

The following people spoke either for or against the application:

- 1) Kenda D. Zimmerman, her property abuts the easterly side of this lot. Questioned whether the OWTS has been approved by RI DEM. Mr. Carpenter explains that it has been approved, and he is here to request relief from the Town's dimensional regulations. Mr. Carpenter states that the perk test results were favorable – quite good – eight (8) foot water table. Ms. Zimmerman feels it will have an adverse affect on the value of her real estate which is next door.
- 2) Eric Zimmerman, his property abuts the easterly side of this lot. He thinks that allowing this to happen, and having the development on this particular lot will diminish the attractiveness of the Hopkins Mills Neighborhood / Village for everyone.
- 3) Jon Andrews, spoke on behalf of his mother Mildred Andrews, she lives across the street in the Hopkins Mills Village; and it is her opinion that another house puts the village off course, and is not a good thing for the area.

Zoning Board Comments (if any):

There was some discussion between the Board Members that the property was indeed zoned agricultural / residential, and that people have a certain expectation of a right to develop their real estate in the manner it is zoned; and that they cannot deny an application just because others feared a reduction in their own property values. It was also noted (again) that the residence (house) itself did not require any relief from the set back requirements, and that the OWTS would be located the required 100 feet from any individual well(s).

No comments were received from the Planning Board regarding this application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the application, the testimony of the applicant / owner, and any other 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 act and conclusions of law:

1. The board finds that it has jurisdiction to hear and consider this matter under Article VII, Section 1 – Issuance of Variances and Special Use Permits of the Zoning Ordinance for the Town of Foster, Rhode Island.

2. That the Applicant was properly before the board to request relief from Article VI, Section 6; Supplementary Regulations for Sewerage Disposal set back requirements and Article V, Section 1 for a sub-standard lot of record under (nonconforming use sub-standard lot of record.)

3. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant. - The lot in question was a lot prior to the passing of the zoning ordinance, and therefore became a substandard lot of record once the zoning was passed.

4. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain. - There is no requested change for what the

property is zoned for – the applicant intends to build a single family residence in an area that is zoned agricultural / residential.

5. That the granting of the requested variance 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 the ordinance is based. - The area surrounding the parcel in question is a village type neighborhood consisting of primarily single family homes.

6. That relief to be granted is the least relief necessary;

7. In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere convenience. If the dimensional variance is not granted, there is the issue of what the substandard lot of record could be used for if not for what it is zoned.

Based upon the above findings of fact, the Board finds that the Applicant has met its burden of proof with respect to the application and therefore;

Motion to Approve

William Gibb made a motion to approve the application 10-03-02-Z for the applicant Brian E. Carpenter (Long Realty) and the landowner Marlene M. Manchester, for that parcel of real estate located at Pole 34 Old Danielson Pike, Foster, RI, a/k/a tax assessor's plat 22, lot 44, consisting of 0.7158 acres +/- of real estate, requesting relief from the Foster Zoning Ordinance Article VI, Section 6, Supplementary Regulations for Sewerage Disposal set back requirements, and Article V, Section 1 for a sub-standard lot of record under (nonconforming use substandard lot of record); for permission to keep the leaching field for the septic system 55 feet off the easterly property line, 90 feet off the westerly property line and 44 feet off the rear property line.

Conditions of Approval

No Conditions were placed upon this application.

Joseph Walsh seconded the above motion. There was no further discussion on the motion.

Members voting to approve: Joseph Walsh, Heidi Colwell, William Gibb, Paula Mottshaw and Carl Saccoccio.

Members voting against: None.

Motion Passes: 5 to 0

Hearing #10-03-03-Z – John Brian Day (Applicant) & Matthew S. Chmura (Landowner)

Address: 15 Jencks Road, Foster, RI – Plat 01 Lot 0070

Requested Relief: Requesting relief from Article IV Zoning Regulations, Section 3, Open Recreation Uses, No. 6 Open Recreation Events & Amusements (License required by Town Council Ordinance 95-12-366). More specifically, requesting permission to hold a One Day Recreational dirt bike event, situated in and around the sand and gravel pit. "J Day Scramble."

PUBLIC HEARING OF THE PETITION

The applicant, John Brian Day, explained that he would like to run an all day event on real estate owned by Matthew S. Chmura off of Jencks Road. The event would be one day only, and would be a recreational dirt bike event situated in and around the sand and gravel pit. The event would be for families, people of all ages. Mr. Day explained neither alcohol nor drugs would be tolerated at the event. There would be appropriate security and other staff. It is a requirement to be fully insured, to have police on site and to have EMTs on site. The event would be fully insured, and food refreshments would be served. Mr. Day explained that he has attended and worked at other such events, and therefore, he knows what is needed to make it a successful and safe event. The landowner, Matthew Chmura explained that he and Mr. Day first discussed this matter some months ago. Mr. Chmura said there are plenty of trails that could be used within the boundaries of his property.

Interests of Others: The following people spoke either for or against the application:

1) Chris Smaldone – Questioned the size of the event; how many riders / spectators would there be? How would security be handled?

Answer: (J.B.DAY) The event would be all off road, and would use the natural obstacles and trails at the location. It would consist of "hair scrambles" of one to two miles in length. The total amount of riders could be anywhere from a small (100 riders) to (300 riders) large event. Though Mr. Day believes this particular event will probably be towards the small event size. There will be check points along the trails/ runs to make sure everything is going smoothly. There will definitely be security on site and along the road. It will be dirt bike riders only, nothing else will be allowed.

2) Dorothy Whitelaw – Has two concerns (1) noise – her property is right along the valley and she is afraid that the noise will go directly to her property; (2) if the zoning board allows this will it be setting a precedent?

Answer: (Town Solicitor, John Bevilacqua) The process of licensing the event was explained by the Town Solicitor, it was noted that tonight's proceeding before the Zoning Board was not the final step, and that Mr. Day still needed to appear before the Town Council to obtain a license for the event. At this time Attorney Bevilacqua explained how this type of activity does not meet the definition of a race track.

3) Neale Whitelaw – His main concern was if this was approved would this be considered a building block to allow this type of activity every year, at any location?

Answer: (Board Member William Gibb) Any time someone wished to run such an event they would have to appear before the Zoning Board, and the criteria for approval would have to be met each time, and that each activity would be site specific – the Board would have to look at the totality of the circumstances according to each activity and each site. (Town Solicitor, John Bevilacqua) Any future decision cannot be based solely upon a previous approval. Each decision must be based upon the facts as presented each time, the activity

planned, the site chosen for the activity and any other pertinent issues. Also, if this particular request is granted he still has to obtain a license for the event from the Town Council, and that license will be for one (1) day only; and even Mr. Day would have to go through this whole process again if he wishes to conduct a second event at some future time.

4) Christine Smaldone – Reiterated her concerns regarding the number of bikes that could be involved in this activity, the possible noise level, and that she would not want this to become an annual event.

Answer: (Matt Chmura) This event will be only a one day event, and he hopes that the neighbors come over and enjoy the event. It will be family oriented.

5) Joyce Chapman – Concerned about the noise may affect her animals.

Zoning Board Comments:

There was some discussion regarding the time of the event – 8:30 a.m. to 6:00 p.m. It was determined that there was no rain date, so either the event will take place or it will not on July 31st rain or shine. There was some further discussion regarding insurance – Mr. Day stated that he had to be insured to run such an event. What type of security would be there – Mr. Day stated that he had to have a police presence as well as an emergency medical services presence, and he said that he would have workers/volunteers out along the trails at various check points.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the application, the testimony of the applicant / owner, and any other 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 act and conclusions of law:

1. The board finds that it has jurisdiction to hear and consider this matter under Article VII, Section 1 – Issuance of Variances and Special Use Permits of the Zoning Ordinance for the Town of Foster, Rhode Island.

2. That the Applicant was properly before the board to request relief from Article IV, Zoning Regulations, Section 3, Open Recreation Uses, No. 6 Open Recreation Events & Amusements (License required by Town council Ordinance 95-12-366).

3. That the special use is specifically authorized by the ordinance;

4. That the special use meets all of the criteria set forth in the sections of this ordinance authorizing such special use;

5. That the granting of the special use permit will not alter the general character of the surrounding area or impair the intent or purpose of this ordinance or the comprehensive plan of the Town;

6. The zoning board of review may not extend or enlarge a special use permit except by granting a new special use permit;

Based upon the above findings of fact, the Board finds that the Applicant has met its burden of proof with respect to the application and therefore;

Motion to Approve

William Gibb made a motion to (approve / deny) the application 10-03-03-Z for the applicant John Brian Day, and the landowner Matthew S. Chmura, for 15 Jencks Road, Foster, RI 02825, a/k/a plat 01, lot 0070, requesting relief from Article IV Zoning Regulations, Section 3, Open Recreation Uses, No. 6 Open Recreation Events & Amusements (License required by Town council Ordinance 95-12-366), for permission to hold a One Day Recreational dirt bike event, on July 31, 2010, situated in and around the sand and gravel pit. “J. Day Scramble”;

Condition(s) of Approval

1) The start time shall be restricted to 8:30 a.m. and a stop time of 6:30 p.m.;

2) All parking shall be on site (and off the street); parking will not be allowed on Jencks Road;

3) Every attempt shall be made to be considerate and respectful of the surrounding neighborhood and neighbors;

4) The event must be fully insured and proof of insurance must be supplied to the Town of Foster;

5) Appropriate security and safety personnel must be on site at all times.

6) The event cannot take place without the proper licensing from the Foster Town Council.

Joseph Walsh seconded the above motion. There was no further discussion on the motion.

Members voting to approve: Joseph Walsh; Heidi Colwell; William Gibb; Paula Mottshaw

Members voting against: Carl Saccoccio

Motion Passes: 4 to 1

H. Zoning Board of Appeals will convene to hear the following appeals

None

I. Old Business

Election of Officers

At first there was a motion made by William Gibb to postpone the election of officers, no-one seconded the motion and therefore it failed.

Heidi Colwell made a motion to have all of the officers remain as they currently are – Carl Saccoccio, Chairman; William Gibb, Vice-Chairman; and Paula Mottshaw as Secretary. Joseph Walsh seconded the motion. There was no further discussion on the motion. Motion passed 6 to 0 – all board members and the alternate voted.

J. New Business

None

K. Future Agenda Items

May 12, 2010 Zoning Meeting

Hearing #10-04-01-Z

The applicant/owner Robert T. Thurber Jr., of 217 Hartford Pike, Foster, RI 02825, Tax Assessor's Plat 16 Lot 0049-D, is requesting relief from Article IV Zoning Regulations; Section 13, Dimensional Regulations.

L. Adjournment

Heidi Colwell made a motion to adjourn at 8:40 p.m.

Respectfully Submitted,

Paula Mottshaw, Secretary

Dated