

Approved As Amended
PLANNING COMMISSION MINUTES
June 5, 2013
7:30 PM
Jamestown Town Hall
93 Narragansett Ave.

The meeting was called to order at 7:30 p.m. and the following members were present:

Michael Swistak – Chair

Rosemary Enright – Secretary

Michael Jacquard

Michael Smith

Mick Cochran

Richard Lynn

Not present:

Duncan Pendlebury

Also present:

Lisa Bryer, AICP – Town Planner

Cynthia Reppe – Planning Assistant

Wyatt Brochu – Town Solicitor

Scott Rabideau – Natural Resource Services Inc.

John Somyk

Betty Hubbard

I. Approval of Minutes May 15, 2013

A motion was made by Commissioner Enright and seconded by Commissioner Smith to accept the minutes as written. So unanimously voted.

II. Correspondence – nothing at this time

III. Citizen's Non Agenda Item – nothing at this time

IV. Reports

1. Town Planner's Report
2. Chairpersons report
3. Town Committees
 - a. Harbor
 - b. Buildings and Facilities
 - c. Affordable Housing Committee
 - d. North Rd. Bike Path Committee
4. Sub Committees

V. Old Business

1. **John Somyk - Plat 5, Lot 175 & 194 – Riptide St. - Zoning Ordinance Section 314 Sub District A Review, High Ground Water Table Impervious Overlay District – Zoning Ordinance Section 82-308 Variance Request for Development within the 150’ freshwater wetland setback – Recommendation to the Zoning Board – report from Natural Resource Services – continued**

At the last meeting this application was on the agenda the Commission continued the application subsequent to a consensus being stated by all that they would not recommend an approval of the Application to the Zoning Board. The Planning Commission directed staff to engage a professional wetland biologist to review the information submitted by Wetland Biologist George Gifford by the applicant. The town hired Natural Resource Services Inc., Scott Rabideau to review and report to the Planning Commission on the information submitted by George Gifford with regards to the wetlands.

Lisa Bryer said we gave copies of the file submitted by the applicant to Mr. Rabideau. She highlighted the important recommendations from Mr. Rabideau’s report in her report.

Scott Rabideau addressed the Commission. He stated that he is a certified wetlands scientist and is the principal of Natural Resource Services. He has qualified as an expert in front of Rhode Island Superior Court, CRMC and other boards in several towns in the state of Rhode Island. He gave an analysis of each of the 8 conditions of section 308. A motion was made by Commissioner Smith and seconded by Commissioner Swistak to accept Mr. Rabideau as an expert witness. So unanimously voted.

Mr. Rabideau stated that he had one additional comment that he did not address in his Report. Specifically, that the stormwater system is a volume system not a water quality system and that the proposed system would not meet the current state stormwater quality standards required in the 2010 RI Stormwater Design Manual. Because the application received their wetland permit prior to state adoption of the standards, they are not required to meet the new standards.

The Infiltration system is **designed to be** only 6 inches above the 18 inch water table. The water table should be verified in the area of the infiltration system to insure the greatest separation possible. This could cause groundwater contamination. He pointed this out as a possible issue in his memo among other things.

Mr. Rabideau walked through the swamp, off site, and did find a vernal pool. He found eggs but did not identify which amphibious eggs they were. He pointed it out in his recommendation.

Lisa Bryer had him reiterate the new issue he raised so the Planning Commission understood the issue regarding the stormwater system and the State Manual.

Swistak wants to know about flood zones. It was noted that it is in the new AE **flood zone** **and may require more investigation.** ~~and it falls out of FEMA flood zone.~~ Freshwater wetlands approval dates back to 2006 and if DEM felt that it was an issue they never would have issued a permit. The permit is valid as long as it does not expire. This wetland has a residential abutter component that is the biggest impact.

Commissioner Swistak stated our Comprehensive Plan instructs us to strictly enforce the 150' setback and ask Scott Rabideau is it appropriate and prudent to preserve that freshwater wetland ~~area~~? Mr. Rabideau said that is your purview based on the functions and values of that wetland. Obviously if you have a larger wetland buffer it is better. In our state the DEM says 50 feet. Some towns go beyond the 50' at times. Mr. Rabideau stated several times he is not an engineer and he is speaking as a wetland biologist.

Mr. Rabideau stated, In terms of old septic design compared to new technology, the new systems reduce the amount of nitrates that go into the groundwater.

John Somyk said the report sounded more positive the way he read it then what is being said tonight.

Maureen Coleman spoke, representing the Conservation Commission. She is concerned about the infiltration system. She felt it is good that we are having this discussion about the 150 foot setbacks. The magnitude of this variance she feels would set a bad precedent.

Wyatt Brochu said the burden is on the applicant to show that is not a negative impact.

Mr. Rabideau's review recommended locating the well or septic on another piece of property in the access easement to the subject property; Ms. Bryer stated our ordinance requires the well and septic system to be located on the same property as the house.

Mr. Somyk stated that he will do whatever the Planning wants him to do. Solicitor Brochu stated it is not the Planning Commissions job to suggest things or how to make the application better; it is the applicant's responsibility to propose an application and any changes that they wish to propose. Smith says this is a peculiar situation. He thinks if we came up with an idea it is a good thing.

Commissioner Swistak asked Mr. Somyk if he wants to go forward.

The town has spent some money here with hiring Mr. Rabideau. He does not want to drag this on and waste money. He can come back and can comply with the new standard and move the well and he provides a rain garden or something else. He can do those things, he is willing to modify the plan to make it work. But will that be a guarantee that it will be approved for recommendation to the Zoning Board. If the end goal is everyone is against it he will go ahead with his other plan. Solicitor Brochu interrupted and said if the Planning Commission gives a negative recommendation you will have your public hearing at Zoning. Mr. Somyk stated, if the Planning Commission is against him he doesn't want to go to zoning with a negative recommendation. He is being honest and does not want the Planning Commission to take it as a threat. This is a family property since 1936. He is open to suggestions and willing to modify the current plans. If the end goal is that the Planning Commission doesn't want a house there, he will go forward with his other plan to build a garage instead of a house with no buffer to the wetland or infiltration system. The 2 points he is hearing is the well and the filtration system. Solicitor Brochu said if you make any changes do it here at planning. He doesn't think he can change the well because he thinks DEM might not approve it.

Mr. Rabideau said if you move it outside of the 50 foot setback he would not have to go back to DEM. Last time all 7 were not in favor of a positive recommendation to zoning. He is asking for another straw vote for a consensus to recommend or not.

Commissioner Jacquard – not in favor

Commissioner Smith – Somyk is the last man standing, he probably has a lot more mitigating design features but he is not in favor

Commissioner Enright – not in favor and added if the nitrogen systems are that much better then we could release the 150' requirement but it should be a change in the rules itself and not a variance.

Commissioner Cochran - not in favor

Commissioner Lynn - not in favor , we are faced with specific policies and this should be addressed on a policy level.

Commissioner Swistak - not in favor.

We will get this prepared for the second meeting in June based on findings.

Solicitor Brochu asked Mr. Somyk, because this is a recommendation are you saying you are not going to make changes? No he was answered by Mr. Somyk. Brochu responded, is it safe to say you are withdrawing the application? No, Mr. Somyk responded, he wants to go through with the recommendation, whether negative or not and he is not proposing any further changes based on the conversation or Rabideau's report.

The following Findings of Fact will be added;

1. Maureen Coleman representing the Conservation Commission again testified that the proposed project should not be recommended for approval and is contrary to the intent of the Jamestown Comprehensive Plan to preserve the wetlands in that area.
2. Scott Rabideau of Natural Resource Services Inc., was hired as a consultant to the Town on this application. He appeared before the PC as an expert witness in the field of Wetland Biology, and provided a verbal description of his findings. Of particular concern is the design of the infiltration system at the driveway location. The water table should be verified since the separation is minimal and does not conform to the 2010 DEM/CRMC Stormwater Design & Installation Manual, which calls for 2 feet of separation from high groundwater - where the current design provides only for 6 inches. Further the infiltration system would be considered a 'volume' system and not a 'treatment system' which would be expected to have a lesser impact on wetlands and groundwater.
3. The opinion of the PC is that the hardship imposed by the nearby wetlands is a general condition of the area, and not specific to the lot, which would prevent the applicant from meeting Special Use Permit standard #1, under Sec 82-606.
4. The Town of Jamestown has made a significant effort to preserve the wetland complex associated with this lot for the purpose of groundwater protection for the entire Jamestown Shores region by acquiring 86+ lots and protecting them from development with conservation easements.

5. The Town of Jamestown adopted a greater standard than the State of Rhode Island for setback to freshwater wetlands for all OWTS leach fields for the purpose of protecting freshwater wetlands and their buffers and the significant purpose they serve in protecting groundwater quality.
6. In recommending adoption of the amendments to the Zoning Ordinance related to 308 and 314, the Planning Commission found that a high level of protection is needed to protect the Island's highly vulnerable water supply and to restore contaminated wells. In addition they found that the purposes of the amendments to the high ground water table and impervious layer overlay district (Chapter 82 of the Jamestown Code of Ordinances, Sections 103, 308 and 314) are to:
 - a. Ensure proper septic system operation and provide adequate pathogen treatment.
 - b. Maintain groundwater nitrogen at safe concentrations for private wells,
 - c. Control volume of stormwater runoff through on-site infiltration to recharge groundwater supplies, promote natural pollutant removal processes, and dilute wastewater effluent and other contaminants entering groundwater.
 - d. Protect and restore wetland buffers to maintain their water quality function, filtering sediment, other pollutants in surface runoff, and promoting denitrification of shallow groundwater.
 - e. Provide for use of advanced treatment systems where necessary and provide for their adequate maintenance.
6. Recent changes to FEMA Flood Maps/Zones may have an impact on the proposed project, and applicant should have an engineer obtain a new Flood Zone determination and verify that these changes do not affect the location or proposed elevation of the dwelling.
7. If the Zoning Board were to grant the requested variances, additional restrictions should be imposed to prevent a property owner from adding any other structures to the property, i.e. swimming pools, recreation equipment, patios, paved driveway, hardscape etc. This requirement should be a deed restriction to prevent any further impact and/or encroachment on the wetland.

A motion to continue until June 19th 2013 was made by Commissioner Swistak and seconded by Commissioner Cochran.

So unanimously voted.

2. Shoreby Hill Historic District – Proposed Zoning Ordinance – per request of the Jamestown Town Council – forward with recommendation to Town Council

Commissioner Swistak said he received suggestions made by Commissioner Pendlebury who could not attend the meeting this evening.

Sav Rebecchi said he owned an 800 acre piece of property that was historic and the property went back to the early 1700's. There are some issues that he will bring up at the public hearing. He films and records Newport's Historic District Commission meetings; he has caught them violating

more open meetings laws and have several ethics violations. Does Jamestown want to do this? Their meetings have a court stenographer and the zoning enforcement officer at all meetings too. They have a historic planner too. The town needs to make decisions about how they will be going about this. He is basically saying this could potentially cost the town a great deal of money. We need to cover our bases and we need to be prepared to pay for all of this. Please consider whether or not these are valid issues. Thank you.

Betty Hubbard said they studied for a long time a lot of different ordinances throughout the state and she thinks what Mr. Rebecchi brings up can happen and as a professional she has not seen what he is referring to. She has not been in front of Newport and they are unique and have had their share of problems over the years. It is their desire to do something that everybody is comfortable with.

Mr. Brochu said the issues Mr. Rebecchi brought up will be addressed in Rules and Regulations discussions. Town Planner Lisa Bryer said this is appropriate to bring up to the council at their hearing.

Commissioner Smith said there are people talking about expanding historic districts. How do you designate them and he finds no process for that. Smith is concerned with how many more districts will show up. Rebecchi says it helps to be on the historic National Registry.

Commissioner Swistak said should we add a finding that says there will be additional staff requirements and financial impact. Solicitor Brochu said yes this can be added to findings.

Commissioner Smith said the council should be careful and consider the ramifications of additional historic districts. The Camel's nose is under the tent. There is a clause in the ordinance that states that we are not exempting ourselves, as a Town, from this ordinance. Additional Findings of Fact:

1. Creation of the Historic District Ordinance and Commission will require significant staff, administrative, and financial resources and careful consideration should be given to the creation of policies and procedures which address allocation of these resources;
2. The Planning Commission recommends that introduction of the new Historic District Ordinance and Commission be done cautiously. This new ordinance will restrict the rights of property owners in the Historic District; and is a significant change to the status quo.
3. Future expansion of existing Historic Districts or creation of new Historic Districts should be approached with extreme caution and given the most thorough public review possible. Careful consideration must be given to the residents of any new Historic District who would be opposed to the new Zoning Ordinance regulations and restrictions.

Commissioner Enright made a motion to forward a recommendation to the town council which includes approval with the additional findings of fact. Commissioner Cochran seconds the motion. So unanimously voted.

VI. New Business – nothing at this time

Planning Commission Minutes

June 5, 2013

Page 7

Commissioner Swistak reminded the Commission that elections will be on the agenda for the next meeting. The chair has the option to set up a nomination committee and he is not going to do that so he asked the commission to come prepared to make recommendations for officers and vote.

A motion to adjourn at 9:45 was made by Commissioner Lynn and seconded by Commissioner Cochran. So unanimously voted.

Attest:



Cynthia L Reppe
Planning Assistant

This meeting was digitally recorded