

Approved As Amended
PLANNING COMMISSION MINUTES
September 4, 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	Duncan Pendlebury – Vice Chair
Rosemary Enright – Secretary	Michael Jacquard
Richard Lynn	Michael Smith

Not present: Mick Cochran

Also present:

Lisa Bryer, AICP – Town Planner
Cinthia Reppe – Planning Assistant
Wyatt Brochu – Town Solicitor
John Murphy – Attorney
Norman Orall – PE – Commonwealth Engineers & Consultants
Douglas DeSimone
Anthony Cofone

I. Approval of Minutes July 17, 2013

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

Approval of Minutes August 7, 2013

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

II. Correspondence

1. FYI – Letter Re: from Barbara Herrmann- 14 Holmes Ct. Received
2. FYI – Memo to Zoning Board – Spinakkers Café. Received
3. FYI – Memo to Town Council – Spinakkers Café. Received
4. FYI – Letter from Newport Chamber – Statewide Planning. Received

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

Burgin Lambert is the architect group selected for the golf course building currently working with the planning department staff, inventorying the needs for the Golf Course. The council will hold a public workshop to discuss the 2nd floor of the building if there is to be one. It will need development plan review possibly down the road about 6-8 months from now.

V. **Old Business – nothing at this time**

VI. **New Business**

1) Robert F. Nunes, Plat 8 Lots 85 and 569. 7 and 11 Watson Avenue. 2 Lot Subdivision (Administrative) with Variances required. Preliminary Review and Approval

Attorney John Murphy presented this application. Both lots are non conforming or this could be done administratively. These lots go back to the 1930's and one of the houses built was put partially on the other lot. Each house will be on its own lot after this subdivision and after the zoning board approves they will come back to Town Planner Lisa Bryer.

Commissioner Enright asked about the property to the west, it says owner unknown. A discussion ensued regarding ownership of this area. Mr. Murphy is currently in the process of a title search and will see if it can be determined who owns that strip of land.

Town Solicitor Wyatt Brochu asked Mr. Murphy to please address this issue before it goes to zoning. Commissioner Swistak said we will add a condition in this regard.

Commissioner Pendlebury asked if the existing dwelling gets demolished does the variance run with the building? If they take the building down then they have to go before the zoning board.

They would like a finding of fact added that states that Mr. Murphy represented the applicant and answered questions asked by the board.

A motion was made by Commissioner Swistak and seconded by Commissioner Smith to grant conditional Administrative Subdivision approval in accordance with the Town of Jamestown Subdivision Regulations, RIGL 45-23-37 and the plans entitled "**Administrative Subdivision Plan for Robert F. Nunes, Plat 8 Lots 85 and 569, 7 and 11 Watson Avenue, Jamestown, Rhode Island; prepared by Darveau Land Surveying, Inc., P.O. Box 7918, Cumberland, RI 02864; dated August 22, 2013** based on the following Findings of Fact and subject to the following Conditions of Approval:

A. Findings of Fact

1. The subdivision is consistent with the requirements of the Jamestown Comprehensive Plan and/or shall satisfactorily address the issues where there may be inconsistencies:

2. Neither lot in the subdivision conforms to the standards and provisions of the Jamestown Zoning Ordinance. Both lots are existing, non-conforming by size and frontage. Lot 569 will become conforming by frontage and will increase conformity by size. Lot 85 will become more non-conforming by size and frontage;
3. No building lot is designed and located in such a manner as to require relief from Article 3, Section 308 of the Zoning Ordinance as both existing dwellings are connected to public sewer;
4. There will be no significant negative environmental impacts from the proposed development as shown on the plans, since no further development is proposed as part of this subdivision;
5. The subdivision as proposed will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and buildings standards would be impracticable;
6. All subdivision lots have adequate and permanent physical access to a public street, namely, Watson Avenue. Lot frontage on a public street without physical access shall not be considered compliant with this requirement;
7. The subdivision provides for safe circulation of pedestrian and vehicular traffic, for adequate surface water runoff, for suitable building sites and for preservation of natural, historical, or cultural features that contribute to the attractiveness of the community;
8. The design and location of streets, building lots, utilities, drainage improvements, and other improvements in the subdivision minimize flooding and soil erosion;
9. All lots in the subdivision have access to sufficient potable water for the intended use. Both dwellings are connected to public water.
10. Attorney John Murphy represented the applicant at the Planning Commission and answered questions of the Commission.

B. Conditions of Approval

1. This subdivision is for the purpose of correcting a non-conformity whereby a lot line runs through a structure, and according to the applicant's Zoning "Application" "will allow a lot line adjustment that will result in lots conforming to the requirements of section 82-303 (one residence per lot)";
2. That payment of a fee in-lieu-of land dedication shall not be required for this subdivision as required by Article IIID of the Jamestown Subdivision Regulations because no new lots are being created;
3. Zoning Board of Review approval shall be granted for the requested variances prior to final subdivision approval:
 - Lot 85 – Variance for side lot setback of 4 feet where 6 are required on east side of lot
 - Lot 569– Variance for side lot setback of 4 feet where 6 are required on west side of lot
 - Lot 85 - Variance for existing non-conforming lot by size becoming more non-conforming by size (listed on revised application to Zoning Board);
4. Granite monuments, or where granite monuments are not suitable, other suitable survey markers, other than concrete, shall be placed at all corner points at the new property line;
5. The owner of the adjacent property to the west shall be identified and conclusive evidence be provided to the Zoning Board with the application;
6. This approval shall be recorded with the Town Clerk contemporaneously with the Final Plat; and,

7. This approval shall expire ninety days from the date of approval unless the Final Plat is signed by the Administrative Officer and recorded in the office of the Town Clerk of the Town of Jamestown.

So unanimously voted.

2) Anthony Cofone – Assessors Plat 3A Lot 157, Catamaran Street-Zoning Ordinance Section 314 High Groundwater Table and Impervious Overlay District Sub-district A review-Recommendation to Zoning Board

Engineer Norman Orall PE, will give a presentation on this application.

Justin Jobin received some new information this morning from the applicant's engineer.

Norman Orall PE has been a civil engineer for 23 years. He attended UMass Amherst and has been working in RI since 1999. A motion was made by Commissioner Smith and seconded by Commissioner Jacquard to accept Mr. Orall as an expert witness. So unanimously voted.

Mr. Orall explained this is a 7200 sq. ft. lot and is known as Plat 3a lot 157 and is in subdistrict A. Based on the ordinance he said they are seeking a recommendation for zoning. He explained the plan with the garage underneath and the house above it.

How much fill are you proposing asked Commissioner Swistak. Approximately 2 feet in spots but it will vary. A 10 foot triangle as much as 2 feet and then a 20x20 area 18 inches. On the worksheet submitted it sited 10percent impervious coverage. The Town Engineer Comments noted that it is really 12 percent. This should be corrected prior to submitting to Zoning.

Douglas DeSimone said the applicant had a 6 year old water table study previously that showed it being 28-30 inches so when Mr. Cofone first spoke to him DeSimone said yes it will work, but that was based on the wet season monitoring, not the required soil evaluation. DeSimone indicated that he can make the house work at 28x28 but that will bring it to just under 10%, which they are planning on doing. ~~More separation could be created but that requires more fill.~~

Justin Jobin addressing the first 2 questions: First, the ordinance is very specific requiring that the maximum impervious coverage be determined by the most restrictive soils information. Based on that, the maximum impervious coverage is 9%. Secondly, We understand that fill is necessary for the proper installation of the septic system components, the fact remains that 2 feet of fill will significantly alter the drainage on this lot, his main concern is that by exceeding the impervious coverage limits, will lead to an increase in runoff , which puts additional strain on the mitigation efforts.

Jobin went on to say that the drainage basin proposed, though recently revised, still only provides for 5 inch separation to the water table. In addition, the spillway from the basin directly flows onto Catamaran. In his opinion, this at the very minimum would cause a nuisance to the abutters, and could lead to freezing and ice build-up in the street, creating obvious safety concern.

Mr. Jobin when asked by the applicant recommended creating another rain garden if possible. If it were possible to design this to not increase the runoff it would be approved? Pre and post drainage

patterns were provided by Mr. Orall. He stated that he has tried to mimic existing patterns, by rerouting and slowing runoff and maintaining the 10 year storm on the lot. Mr. Jobin, disagreed, stating that eventually all the runoff would be directed to Catamaran St.

Solicitor Brochu said there are 2 levels of review here (1) 82-314 Requirements and (2) Special Use Permit requirements. The 10 year storm is the floor not the ceiling, additional standard can be required under the SUP Process. Jobin then stated that we are looking at 2 different things, 1) mitigating the runoff from Impervious surfaces for a 10-year storm as required and 2) dealing with stormwater runoff created by fill and grading. His concern is during a rain event it is going to over burden the rain garden. The calculations take into account the roof Mr. Orall said, Mr. Jobin is still concerned with the spillway and stated the proposed elevations of the spillway. Mr. Jobin also stated that the drainage calculations for the updated rain garden have not yet been submitted to the Town. Mr. Orall indicated that they will not change since the capacity did not change.

~~Mr. DeSimone~~ **The applicant** respectfully asked for a continuance. The Commission concurred. Solicitor Brochu noted that when you come back make sure to have maintenance plan for rain gardens, and for keeping the driveway pervious. The restrictions will be recorded for future owners too. The Commission asked if this property was the subject of a well variance? The applicant answered no. The Commission would like that verified. Mr. Cofone is in agreement to continue to a future meeting. He does not want to decrease to 9% but will try to satisfy the requirements.

A motion was made by Commissioner Smith and seconded by Commissioner Jacquard to continue to another meeting. All in favor.

3) Solicitor Comments and Discussion: Code of Ethics, Recusals, and Open Meetings Requirements

This was brought up by Mr. Rebecchi after attending the Governors Open Meeting Summit regarding recusal. Mr. Rebecchi and Mr. Brochu attended this meeting. Mr. Brochu said sometimes the speaker does not state the law at these meetings but best practices. There is an important distinction. He took Mr. Rebecchi's statement and called the speaker who said that RI ethics laws do not require that you publicly state the reason you are recusing or that you leave the podium, as noted by Mr. Rebecchi several meetings prior. That is more of a conservative recommendation. The chair noted that we have always followed the practice of the person leaving the podium. Nothing was done improperly. He does not see a need to go above or beyond. Solicitor Brochu recommended that the Planning Commission put this on the agenda for discussion if you want to change the procedure in the "Rules of Procedure" for the Planning Commission.

Mr. Rebecchi said the reason this became interesting is within different boards and cities he has witnessed different procedure with regards to this. He would like consistency.

With regards to the minutes brought up by an email correspondence the detailing of them, the minutes are not a transcript of a meeting it is a summary. Commissioner Enright asked what is the legal status of the recording? Solicitor Brochu said that is the record. The minutes legally only have to show the votes.

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A board or commission consensus is considered a vote. There is a difference between a consensus and an approval of an application. Distinction needs to be made between a consensus and an actual motion for approval. Sometimes the board will give the applicant a consensus of what they are looking for and then change their mind. That is OK.

A motion to adjourn was made by Commissioner Smith and seconded by Commissioner Enright at 9:05 p.m. So unanimously voted.

Attest:


Cynthia L Reppe