

Approved As Amended 9-17-08  
PLANNING COMMISSION MINUTES  
September 3, 2008  
**7:30 PM**  
**Jamestown Town Hall**

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

Gary Girard	Michael Swistak
Barry Holland	Richard Ventrone
Alexandra Nickol	Nancy Bennett

Not present:  
Jean Brown

Also present:  
Lisa Bryer, AICP – Town Planner  
Cynthia Reppe – Planning Assistant  
Christopher Orton – Town Solicitor  
Peter Brockmann – Attorney  
Gregory J. Souza – PE  
Dave Renzi – Owner – Out in Front Horticulture  
Valerie Tessier

#### **I. Approval of Minutes August 20, 2008**

A motion was made by Commissioner Holland and seconded by Commissioner Swistak to accept the minutes with the following changes:

Page 1 – last sentence, He **Jerry McIntyre** is concerned about preserving the rural nature of the town.....

Page 2 - under Tree Committee – RI Tree Council is doing ~~classes~~ **a Tree Stewardship course** Sept. 9<sup>th</sup> at the library.....

So unanimously voted.

#### **II. Correspondence**

1. CRMC – State of RI Assent – Coulter – Jamestown LLC, 220 South Main St., Providence, RI 01802; to construct and maintain a residential boating facility to consist of a 4’x58’ timber fixed pier, a 3’x16’ ramp and a 10’x15’ (150 sq ft) float – located at 8 Coulter St., Jamestown Plat 7 Lot 122. Noted.

#### **III. Citizen’s Non Agenda Item – nothing at this time**

#### **IV. Reports**

1. Town Planner’s Report  
Town Planner Lisa Bryer will be attending the Southern New England Planning Conference tomorrow and Friday.
2. Chairpersons report

3. Town Committees
  - a. Harbor-Commissioner Bennett reported they are still working on revisions to the Harbor Management Plan.
  - b. Fort Getty – this committee will be meeting this month
  - c. Buildings and Facilities- this committee will be meeting this month
  - d. Others
4. Sub Committees

## V. Old Business

### 1. Manning Major Subdivision, Upland Farm - Cedar Lane – Partial release of Bond

They are more than halfway through with the construction. This release is for \$25,114.00 they are moving along and this is the second request. Commissioner Girard made a motion that was seconded by Commissioner Ventrone to release \$25, 114.00. So unanimously voted.

Commissioner Girard recuses himself and leaves the table. Vice Commissioner Swistak assumes the Chair position.

### 2. John A. Hayes -- Zoning Ordinance Section 314 Sub District A Review High Groundwater Table and Impervious Layer Overlay District and Request for Variance to Section 308 – Setback to Freshwater Wetlands - Plat 16 Lot 15, Bark and Seaside Dr. – Recommendation to Zoning Board – Continued

Commissioner Swistak gave a brief synopsis. Christopher Orton, Town Solicitor stated that they can make the correspondence received from the abutters part of the record to submit to the zoning board and informed them they are advisory to the zoning board. Commissioner Holland made a motion to include the correspondence received tonight into the public record; Commissioner Bennett seconded the motion. Commissioner Bennett asked if we can take a few minutes to look over the new correspondence. Attorney Orton said they moved to close the public comment aspect, but the public has the right to be here but the Planning Commission is not obligated to hear from the public. There will be a public hearing when it goes before Zoning. The Planning Commission was in favor of receiving the correspondence to submit to the Zoning board. All in Favor.

Attorney Peter Brockmann was not intending to say anything at tonight's meeting. Mr. Mike Gray, Town Engineer's memo addresses Mr. Braga's engineering report; it seems to Mr. Brockmann that Mr. Gray understands what Mr. Braga did. He has nothing further to add. Commissioner Bennett made a comment on the roof calculations. It will be checked by the Building Official prior to going to Zoning.

Commissioner Swistak would like to get the consensus of the Commission on Section 308 setback to freshwater wetlands:

Commissioner Bennett – she read the Conservation Commission memo from May 29<sup>th</sup> 2008 that says it should not be granted. It is such a great distance from 150 to 67 and down to 105 from 150. She would like the 4 bullets that were in the Conservation Commission Memo to be added to the Findings of Fact.

Commissioner Ventrone – Ditto with everything that Nancy said. We need to listen to our Conservation Commission who are the experts. He cannot approve this variance request.

Commissioner Holland - he has visited this site 5 times during rain events and after and he saw the runoff on the street going down Bark St. He saw very little going onto this property but the property to the east and south is where the runoff was coming from. There was a blacktop berm which forced the runoff down the road. In a heavy storm to the east the neighbor had put a drain in that drained into the street, some of the abutters are complaining about the runoff but they are forcing it onto the road. He has a problem with that particular aspect. His review is the applicant has met the standards in the ordinance.

Commissioner Nickol supports granting the variance. She is convinced that the applicant has done everything in their power to not make it worse. Each and every person that lives there should play some role in mitigating the existing problems.

Commissioner Swistak – based on everything he has heard and in accordance with the Comprehensive Community Plan he is inclined to deny.

Commissioner Ventrone made a motion to recommend denial of Section 308 of this application to the Zoning Board. Commissioner Bennett seconds the motion. Commissioner Bennett tried to word-smith the motion several times with no amendments to the motion voted on.

Commissioner Ventrone said less house would have less impact. Commissioner Holland disagrees with Ventrone stating the ISDS is in the only place it can go so the size of the footprint has nothing to do with where the septic is placed. Commissioner Bennett says Jamestown has been protecting the wetlands and that is what the ordinance requires. This gives us a way of protecting our wells and recharges the groundwater. Commissioner Holland said with all due respect to the Conservation Commission they are all lay people. It was brought to his attention that Chris Powell the chair of the Conservation Commission is a DEM biologist and there are several other wetland professionals on the board.

Commissioner Ventrone withdrew the motion because they could not come to an agreement on the motion wording.

Commissioner Swistak made a motion seconded by Commissioner Ventrone that based on the previously submitted Findings of Fact the Planning Commission recommends denial of the request for variance to Zoning Ordinance Section 308 setback to Freshwater wetlands for the John Hayes application Plat 16 Lot 15 Bark Ave .

### **Findings of Fact**

1. Ms Diana Brennan, Environmental Scientist of Mason & Associates Inc provided expert testimony on the impact of the proposed development on the isolated wetlands approximately 67 feet from the proposed ISDS; and approximately 109 feet from a coastal wetland. The findings follow:

- a. The proposed development will not degrade the quality of groundwater or any wetland or surface water body, either directly or indirectly, on site or off site.
- b. The proposed development will result in the least disturbance and removal of vegetation as possible and every attempt has been made to site the ISDS and associated dwelling as far as possible from the wetland edge.

- c. The proposed development will not obstruct floodways or reduce the capacity of the site to retain floodwaters.
- d. The proposed development will not cause sedimentation of wetlands and will include all necessary erosion and sedimentation control measures.
- e. The proposed development will not reduce the capacity of any wetland to absorb pollutants.
- f. The proposed development will not degrade the recreational or educational value of any wetland or water body.
- g. The proposed development will not reduce the capacity of any wetland to recharge groundwater.
- h. The proposed development will not degrade the value of any wetland or water body as a spawning ground or nursery for fish and shellfish, or habitat for wildlife or waterfowl.

The above findings are presented in complete form in a letter from C. Mason, PWS and D. Brennan to Attorney Peter Brockmann, dtd 7/28/08.

- 2. There was no expert testimony presented which would refute the data presented by Mason & Associates Inc.
- 3. Town Engineer, Michael Gray PE, reported to L. Bryer, Town Planner in a memo dtd 8/5/08, that the proposed location of the ISDS system is the only suitable location and the applicant has received approval from CRMC for the proposed improvements to the property.
- 4. The application is inconsistent with the Goals, Policies and Implementation Action Plan contained in the Jamestown Community Comprehensive Plan of 2004, which states under "Freshwater Resources": Policy 2, Action b – Strictly enforce the 150 ft setback of ISDS from wetlands; and Policy 5 – Immediately act to manage, protect and restore groundwater resources in dense rural areas.
- 5. The Planning Commission heard significant public testimony from no fewer than seven abutters and neighborhood residents, who objected to the request for variances citing the following reasons:
  - a. Granting of the variance will set a dangerous precedent for future applicants desiring to develop lots adjacent to wetlands.
  - b. An engineered drainage system will need diligent maintenance to insure future proper functioning of the system
  - c. The amount of relief being sought in this application is excessive, and the maintenance of the 150' buffer to a wetland is critical to protect the resource.
  - d. The testimony of the Mason and Associates Environmental Scientist was disputed regarding the presence of wildlife, and the impact of the development. Public testimony included recurring and frequent sightings of deer, rabbits and birds.
- 6. In a Memo from the Conservation Commission dated 5-29-08 they "recommended denial of the application due to the potential cumulative adverse impacts of the proposal on neighborhood

drainage, groundwater and wetlands. Granting the requested variances may only exacerbate these problems.” They noted the following in their Memo:

- It was the Conservation Commission’s initiative that put the Section 308 Wetland Setback requirement into place in Jamestown. It is documented that wetlands play a very important role in water quality assurance and groundwater recharge on Conanicut Island. The Jamestown Shores area, with its many small substandard lots has been shown to have documented water and water quantity problems.
- The required separation of an ISDS and wetland (150’) cannot be met under the constraints of the proposed lot and adjacent existing wells. Variances of 83’ and 41’ are requested. It should be noted that the “Alternative Area” for the ISDS, should the first system fail, is approximately 10’ closer to the subject wetlands.
- It is our opinion that the small isolated wetland to the north of the subject property has a role in groundwater recharge for area wells, and the coastal wetland helps to protect the water quality of the Jamestown Shores Beach and Narragansett Bay. It is also our opinion that the potential exists for the proposed ISDS to adversely impact these wetlands, especially with the 83-93’ proposed setback variance from the isolated wetland and the 41-51’ proposed setback variance from the coastal wetland.
- The Conservation Commission is on record in the current Comprehensive Community Plan, recommending strict enforcement of Section 308. While the environmental impact of a single variance may be negligible the cumulative impact of multiple variances is of great concern to the Commission.

In summary, considering the extraordinary and questionable measures that have been proposed to mitigate surface water runoff from this property, and the wetland setback variances requested by the applicant, the Conservation Commission cannot support this project as proposed.

It is our opinion that there are potential cumulative adverse impacts of this proposal on the neighborhood drainage, groundwater and wetlands. Granting the requested variances may only exacerbate these problems. There is a threshold beyond which cumulative impacts may be untenable to both current and future residents of the area; we may have reached that threshold. It is only prudent to take a risk-averse approach to requested variances considering the tenuous situation in the Jamestown Shores area.

7. Mr John Regan, abutter, challenged the testimony of the Environmental Scientist Diana Brennan regarding the wetlands impact, citing that the testimony did not include a statement that there would be ‘No’ impact on the nearby wetlands; and she did not define the meaning of ‘minimal impact, and whether these impacts were significant or insignificant.

8. The Planning Commission heard testimony from a neighborhood resident that over the last 46 years, development in the surrounding area has affected the amount of surface water, and surface water runoff, based on the visual observation of the stream which runs from east to west slightly north of the proposed development.

9. Attorney Brockmann testified that the applicant has met the burdens imposed by the ordinance relative to new development, and that there had been no expert testimony

presented which refuted or contradicted the scientific facts contained in the reports and plans of the applicant.

So voted:

Michael Swistak – Aye  
Richard Ventrone – Aye  
Nancy Bennett – Aye

Barry Holland - Nay  
Alexandra Nickol - Nay

Motion carries by a vote of 3-2

Commissioner Swistak asked each Commissioner for their input on Section 314 Subdistrict A High Groundwater Table and Impervious Layer Overlay District:

Commissioner Ventrone – the expert changed his calculations again and again. There is flooding on Seaside Drive and Bark Avenue and significant testimony from people on how it is going to hurt their property, hardships there, it is very wet and he questioned as a non-expert how they are going to get rid of the water, and his gut feeling based on what the neighbors have said is this is going to be an excessive hardship on the neighbors. He believes minimal impact exceeds what is being proposed on that property.

Commissioner Holland went and observed for himself and disagrees with Ventrone.

Commissioner Bennett – this is a fragile neighborhood with innumerable problems that she has heard. The site design system has many elements (drainage, ISDS, green roof) that if it is properly maintained it will be OK but the maintenance issues are huge, and she explained item by item. Maintaining the system is the applicants responsibility and it is a big question as to whether future owners can do all of this and be diligent about it. All of these mitigating elements need to be maintained and the only one responsible is the owner and the maintenance is a huge task that has to go on forever, she is skeptical of who is going to maintain it. If it is not maintained, the burden falls to the abutters.

Commissioner Swistak- he is looking at this through expert testimony he has heard. The design has not been refuted by the town engineer. The applicant has met the standards in his opinion so he would recommend approval.

Commissioner Holland understands the maintenance issues and the first one to suffer will be the homeowner.

A motion was made by Commissioner Swistak and seconded by Commissioner Holland that based on previously submitted Findings of Fact we recommend approval of the request for a special use permit under Zoning Ordinance Section 314 development in Sub district A as proposed by Mr. John A Hayes – Plat 16, Lot 15 – Bark and Seaside Dr.

### **Findings of Fact**

1. Mr John Braga Jr PE, PLS of John Braga and Associates Inc, provided expert testimony that the current design of the storm water collection system is adequate to meet the requirements of the ordinance, and further testified that the design would actually exceed the requirements of the ordinance. The Drainage Plan, and Stormwater Calculation Worksheet are contained in the official record.

2. The applicant agreed to the following conditions regarding the design, construction and maintenance of the storm water collection system, should the application be approved:
  - a. The grading and drainage plans will be officially recorded with the Town.
  - b. The applicant will include in the final design, a procedure to periodically maintain and test the system, satisfactory to the Town Engineer and Zoning Official.
  - c. The applicant will submit to the Town, results of annual performance tests of the system.
  - d. Inspection and acceptance of the drainage system will be a part of the Certificate of Occupancy approval process.
  
3. There was no expert testimony presented, which refuted the data presented by Mr Braga, on behalf of the applicant.
  
4. Jamestown Town Engineer, Michael Gray, PE provided a written statement to Lisa Bryer, Town Planner of 8/5/08 which contained the following:
  - a. The re-design of the drainage and stormwater management plan mitigates increase in runoff for a 10 year storm as required by the ordinance.
  - b. The re-design addressed earlier concerns with the effectiveness of the design.
  - c. Caution should be used in use of a stormwater system within and beneath the footprint of a dwelling, as to not ‘create conditions inimical to the health and safety of the inhabitants’.
  
5. The Planning Commission heard testimony from no fewer than seven abutters/ neighborhood residents, that the area is often flooded with stormwater, and additional development will exacerbate this condition.
  
6. It is reasonable for a property owner to expect to be able to exercise his right to develop his property, so long as it does not adversely affect conditions on abutting properties.
  
7. Mr John Regan, abutter raised questions regarding the preparation of the Stormwater Runoff Calculations Worksheet dtd 7/15/08. Specifically he questioned the calculations with regards to the Driveway, Lawn and Trench. He strongly recommends the data be reexamined. Mr Regan also criticized the lack of detail on the architectural drawings regarding the drainage system.

So voted:

Michael Swistak – Aye  
Richard Ventrone – Nay  
Nancy Bennett – Nay

Barry Holland - Aye  
Alexandra Nickol - Aye

Motion carries by a vote of 3-2

Commissioner Girard came back to the table and resumed Chair.

## **VI. New Business**

1. **Valerie Tessier – Zoning Ordinance Section 314 Sub District A Review High Groundwater Table and Impervious Layer Overlay District – Plat 3 Lot 36, 529 Seaside Dr. – Recommendation to Zoning Board – Continued**

Greg Souza engineer he did the calculations for the property located at 529 Seaside Dr. The property has just over 15,000 square ft. Currently there is a 1 bedroom house serviced by a cesspool. A 2 bedroom house is being proposed. They are proposing a rain garden to the south of the property for drainage.

Commissioner Girard asked the applicant if she has received CRMC approval. They will go to CRMC after zoning.

Commissioner Bennett asked the Engineer to clarify what the percentage of lot coverage is and he responded that it is 9% and it is shown on the plans.

Commissioner Bennett asked if there are wetlands in the area. No he said.

Commissioner Girard said the new septic system is a huge improvement over the existing cesspool.

The issue was brought up of it possibly exceeding the height limit and Valerie Tessier wants to speak to Fred Brown to find out what they need to do to correct this issue. As far as the height of the house, they can put that as a condition.

Commissioner Ventrone does not see it impacting other people because of the location, his only concern is the 35 ft height. Commissioner Girard said that is up to zoning to determine so Fred Brown can look at it. Height requirement is not part of the ordinance that we are looking at.

Dave Renzi – Out in Front Horticulture – gave a short synopsis of what a rain garden is. It is a garden that percolates water into the ground, this design is an amebic shape and in its simplest form it is generally mulched, it takes the impervious roof runoff and percolates it. Commissioner Bennett asked if it is the same size of the roof. No it is done on a calculation of the roof size. What about erosion of the berm into the bay she asked. He does not feel that it will be a problem based on previous experience.

Commissioner Girard **asked the** ~~what~~ nature of flora, **what** plants will be used, **Mr. Renzi replied** in general ones that will take more water in the spring than summer, winterberry, perennial berries and plants that are native. Commissioner Bennett had an article that said something about rain gardens and she is commending him for the rain garden design.

A motion was made by Commissioner Holland and seconded by Commissioner Swistak to recommend approval to the zoning board for Zoning Ordinance Section 314 sub district A Review High Groundwater Table and Impervious Layer Overlay District –Valerie Tessier - Plat 3 Lot 36 - 529 Seaside Dr. So voted:

Michael Swistak – Aye  
Richard Ventrone – Aye  
Nancy Bennett – Aye

Barry Holland - Aye  
Alexandra Nickol - Aye  
Gary Girard - Aye

Motion carries by a vote of 6-0

## V. Old Business

### 3. Jamestown Zoning Ordinance Update – Jamestown Village Special Development District – Discussion – Continued

Commissioner Bennett is concerned about many issues that she listed in detail. Town Planner Lisa Bryer would like to address one of the issues mentioned which is “the process” of the Update of the Zoning Ordinance as it relates to the Comprehensive Plan.

We are currently updating the Zoning Ordinance and it has to be consistent with the Comp Plan. If we propose something that is not consistent then we need to update it. Our zoning also has to be consistent with the state enabling legislation relating to zoning. At the time of the Charrette we were using the current comprehensive plan. We have a Comprehensive Plan that is consistent with what was discussed at the charette. The densities that they are looking at could mean a significant increase and the comp plan is very clear, the commercial districts should not expand.

**Commissioner Bennett said we are changing parameters, by relaxing parking, increasing lot coverage, adding mixed use by right and reclassifying districts and we should be looking at cumulative impacts of this change. Commissioner Bennett** questioned the newspaper article that showed CD = T4 he got it right that is what was said but T5 is a new level in intensity she stated. For example she said the vet’s office she thinks is the most vulnerable property on the block, that building will be bigger and on the street. Form based zoning is supposed to protect the area. Goals and impacts are her questions before they take a step beyond anything else.

Lisa Bryer Town Planner said it is worth it for everyone to go back and look at the vision report and look at the public input from the charrette. Increase in intensity does not necessarily mean loss of character but we need to be careful. We need to continue to grow with the character being maintained as we go forward with this zoning. Looking at the Comprehensive Plan again is also worthwhile, especially economic development and circulation and be sure to look at the goals in the back of the plan.

Commissioner Ventrone when you talk about increasing density, he looks at it where the bank and gas station are in that area. **He wants it to look similar to the rest of that area.** It will be a benefit. That is his perception; he is looking for design opportunities to make the area look better.

Lisa Bryer said it seems to her that if she can summarize, the proposed increase in density and intensity, she will pull out all the goals and provide them for Commissioner Bennett.

Let’s look at signage and architectural review for the next meeting. Some of the other things we need to look at for the Zoning Update are:

- general zoning update
- regulation of pods
- affordable housing
- smart code
- Commissioner Girard wanted to look at cisterns

A motion to adjourn was made by Commissioner Bennett that was seconded by Commissioner Ventrone at 9:35 p.m. So unanimously voted.

Attest:

A handwritten signature in cursive script that reads "Cinthia L Reppe".

Cinthia L Reppe  
Planning Assistant

This meeting was digitally recorded