

Approved As Amended 4-1-09  
PLANNING COMMISSION MINUTES  
March 18, 2009  
**7:30 PM**  
**Jamestown Town Hall**  
**93 Narragansett Ave.**

The meeting was called to order at 7:33 p.m. and the following members were present:

Gary Girard                      Michael Swistak  
Barry Holland                  Jean Brown  
Nancy Bennett

Not present:

Alexandra Nickol  
Richard Ventrone

Also present:

Lisa Bryer, AICP – Town Planner  
Cinthia Reppe – Planning Assistant  
Peter Rugeiro – Town Solicitor  
Jeff Aptt – Moap Properties  
Mark Liberati – Attorney  
Mr. & Mrs. Eichler – owners Dutch Harbor Boat Yard  
Bucky & Mary Brennan  
Kate Smith  
Randy White  
Spencer Potter  
Andrew Weicker  
Maya White  
Ken Newman

**I. Approval of Minutes March 4, 2009**

A motion was made by Commissioner Swistak and seconded by Commissioner Bennett to accept the minutes as written. So unanimously voted. Commissioner Girard abstains.

**II. Correspondence**

1. FYI – Letter from Chris Powell, Chair of Conservation Commission - Re: Heliports. Received
2. CRMC – Public Notices. Received
3. CRMC – Residential Assent – Lawrence & Elizabeth Allen, 418 East Shore Rd., Jamestown RI; to construct and maintain a residential boating facility, requiring a 76’ length variance from the standard. Plat 4, Lot 28. Received
4. FYI – Letter to Joseph Manning – Partial release of bond. Received

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

#### IV. Reports

1. Town Planner's Report

2. Chairpersons report

Thank you to Commissioners for letting the office know when you will be on vacation or absent. Please continue to do so.

3. Town Committees

a. Harbor

Commissioner Bennett reported the Curbs and Rails project at East Ferry is proceeding as weather permits. The Fort Getty Boat ramp is in Type I waters. Chris Powell who attended the meeting had written the Harbor Commission explaining that CRMC is pretty clear about not dredging in Type I waters with the possible exception for maintenance of a preexisting boat ramp. The plans for the boat ramp were considerably more extensive than simply maintenance. After much discussion, it was decided to go to CRMC for a preliminary determination before proceeding with the full-on permitting process.

b. Fort Getty

Ft. Getty Committee – The Town Solicitor, Town Administrator, myself and FAST representatives are working together to develop a Lease Agreement. Cyndee and I are in the process of developing the process for burying the utilities in the area of the boat ramp for safety reasons.

c. Buildings and Facilities

Has not met since our last meeting

d. Tree Preservation and Protection

Tree outside town hall is slated for removal before Arbor Day and new tree planted on Arbor Day. Mike Gray, Town Engineer asked for condition of trees on Narragansett Ave and to recommend replacement species. The tree committee with the help of Trees New England will be preparing a recommendation for removal and replacement with a variety of species.

e. Affordable Housing Committee

Has not met since our last meeting. They will be meeting soon to review the second draft of the Zoning Ordinance amendments and also the FY09 CDBG application.

f. Wind Energy

Met on March 3 and discussed the Renewable Energy Grant application that will be submitted on March 31. The Feasibility Study is expected to be delivered this week.

g. North Rd. Bike Path Committee

They met on March 4 as was verbally reported at the last meeting.

h. Water Resources Protection Committee

Have not met since our last meeting.

i. Sub Committees

#### V. Old Business

**1. Spencer – Plat 14, Lot 347 – Boom St. – Zoning Ordinance Section 314 Sub District A Review, High Ground Water Table – Impervious Overlay District – Recommendation to the Zoning Board – Cont'd – Recommendation for Approval**

Commissioner Bennett has a couple of questions regarding the plan, she questioned Mr. Aptt about the 2 vs. 3 bedroom plan again. He again explained that this plan was customized for the Spencer's and was made to be a 2 bedroom. **She asked if they had brought this plan showing two doors to the second bedroom to anyone in the Planning office. They had brought it to Michael Gray. Commissioner Bennett said that they had agreed to remove the framing of the second**

**door to second bedroom from the plan but they had not changed the plans. Mr. Aptt assured the commission that the framing of the second door would be removed from the plan.**

With regards to the porous concrete Mike Gray, town engineer's words will be added as a major bullet to the recommendation, stated Commissioner Holland. Commissioner Brown with regards to the 2 vs. 3 bedroom issue asked is there a closet in the 3<sup>rd</sup> room? No there isn't responded Mr. Aptt. Commissioner Brown reminded everyone on the commission that a bedroom is defined as having a closet according to regulations, so therefore it is a 2 bedroom.

**Commissioner Bennett referred the commission to Michael Gray's 2/26/09 memo and recommended adding a condition to fulfill his suggestion that "...any approval of the application require that the design engineer review the construction of the porous concrete driveway and submit a letter with supporting information to the building official before a Certificate of Occupancy" is issued. The chair suggested making it a separate bullet and using Mike Gray's words.**

A Motion to send a positive recommendation to the Zoning board with the above change was made by Commissioner Girard and seconded by Commissioner Swistak.

So unanimously voted.

## 2. **Jamestown Zoning Ordinance Amendments** – Transmittal of Second Draft

Commissioner Girard announced to the Planning Commission and the audience to submit in writing any questions or issues they have to the planning office.

Town solicitor Peter Ruggeiro stated the document is up front the way it is structured. He suggested creating a special village map district, and then the Zones would be sub districts. Then the way it is written would be acceptable. He had a question about page 76 the summary of what the Smart Code Does section, maybe it can be reorganized as a footnote or such. Affordable housing needs reference to the state law and housing appeals board, they change from time to time. He can work them in. This is an Evolutionary document that will be reviewed and updated before it's recommended to the council and he can track changes. As far as he sees, there only needs to be minor changes to accomplish what they want. The biggest issue is the map.

Commissioner Bennett – what takes precedent in 82-1107 1c. and 2. and Table 11-1 regarding the disposition of houses on lots? Mr. Ruggeiro said he did not feel there was a conflict between the two sections and the graphic because it specifically states that facades in CL and CD shall be built parallel to front lot lines. But you can always be more specific. Mr. Ruggeiro suggested asking Fred Brown his interpretation since he is the enforcement officer. How would you read this how would you apply it?

Commissioner Bennett questioned the new section regulating PODS (temporary portable storage units). She remembers not having to get a permit for less than 30 days. **She remembered and her notes indicated that the Commission voted to eliminate the sentence that "A permit shall not be required if a unit is stored for 30 days or less" as tracking would be difficult.** It was agreed that all PODS get a permit for tracking purposes.

Commissioner Girard asked that the commissioners send their questions to the town planner in writing.

## VI. New Business

### 1. **DHBY, LLC – Dutch Harbor Boat Yard Development Plan Review – proposed seasonal deli in existing building – Plat 8, Lot 463**

Attorney Mark Liberati represents the Eichlers, owners and principals of the property. This proposal was generated by Peter Liberati his son who wants to sell sandwiches to Dutch Harbor Boat Yard customers. The owners received requests last year asking for sandwiches, this operation has operated as a bare bones boat yard. There is an existing shack that the sandwiches will be sold from. A variance is needed because it is 3 feet off the property line. He is requesting a variance for the one space it was determined to need from parking. This will only operate during summer months and not when the boats are on land. It should operate on the same schedule as the lease and parking of boats. If planning or zoning needs an additional space they can do that, this is a grandfathered use in terms of parking and parking has always been on town property. They will be asking for relief from parking and zoning setbacks.

Commissioner Swistak asked if this is a subcontract or a lease? A lease. All licensing will be provided for by Mr. Liberati.

A discussion ensued regarding the expected hours of operation. They may open up for bagels in the morning so they think it will be 8-6p.m. but are asking for 8-8p.m. just to be sure. Victualing license will be 8-8p.m. Define the season so it could mesh with the lease from May 15-Oct 15. Will delivery trucks be bringing food in and what about trash trucks, will that increase? He will prepare food at his restaurant in Newport and if not sold in Jamestown it will go back to Newport. A standard indoor deli cooler, minimum retention of food storage, and there is a dumpster there now but it will not be a problem for additional pick up if needed. A microwave will be used, but not a stove and maybe a hot plate for chowder or soup, a coffee pot and a refrigerator or deli case. Those are the only pieces of equipment that will be needed. All plug in appliances.

Commissioner Bennett asked what is your intention if nothing more than sandwiches that you need the hours to be until 8:00 p.m.? Are you open to restricting this to lunch only and closing early? Mr. Liberati explained that people want to go out later when they get off work, so they will have the ability to pick up a sandwich on their way to their boat. **Mr. Liberati conceded that the sandwich shop could close at 6 p.m. if that is what the Commission wanted.** What about music? Mr. Liberati answered that live entertainment is not part of any proposal, if you want to prohibit a radio they can live with that.

Commissioner Brown asked does the electric need upgrading? They will be checking with Mr. Brown.

Mr. Eichler responded regarding the trash issue, when they took it over they upgraded to a 6 yard container since people from around town were putting their garbage in there. There should not be more garbage then there already is.

They are providing an amenity to their customers who are always asking, where can they get something to eat? Commissioner Bennett asked about picnic benches not being put on Narragansett Ave. They are not there currently, they will be located to the north and the beach end by the railroad system as shown on the plan.

Kate Smith 15 Spanker St. – currently parking is open to public, in the event of a family coming down from Cranston to get a sandwich and not be on a boat there will be parking problems. Don't forget the impact of parking issues and signage etc. This is now inviting anyone to come have lunch at Dutch Harbor.

Mr. Liberati said this is private property. Commercial waterfront in both locations, east and west ferry, this is a public facility. His son has never put ads in the paper to just sell sandwiches it is intended for the customers. This concept is to provide an amenity to their customers.

Randy White - Westwood Ave - .will seating at picnic tables be the only seating? He was answered that there are currently 4 tables on North side and the beach end along railroad system.

Mary Brennan - 238 Narragansett Ave – parking is her issue, 150 private moorings parking extends well up Narragansett Ave. during the summer. They need 167 parking spaces just for the moorings. They are already short without the introduction of the sandwich shop

Bucky Brennan - 238 Narragansett Ave. – parking is his issue too. They like the improvements that have been done to the boatyard but it's his opinion that a sandwich shop is not a water related use. What is the definition of a lunchroom? If the residents have no ability to control having a lunchroom then restrict the hours. Mr. Brennan stated outside compressors will be noisy, every weekend the dumpster is overflowing he is not sure about last year but in years past. Mr. Liberati complained when they tried to expand the east ferry area. Mr. Brennan said he is a nimby he doesn't want to be a nimby but he cannot support this without all the other issues being taken care of. His daughter works at East Ferry and she goes in at 5 am. He does not want to see early hours happen. Hour restrictions and size restriction and no cooking on the premises are what he would like.

Spencer Potter – 25 Westwood Rd. and Narragansett Ave – the West Ferry community would be badly served and he is opposed.

Commissioner Swistak questioned an issue that Mary Brennan brought up with regards to parking spots, are there any variances in effect currently.

Fred Brown, zoning enforcement officer did a calculation that relates to what Dutch Harbor is required based on number of moorings owned by DHBV and they own 100 and the parking requirement is 68. But they are grandfathered for what they have. A discussion about parking for the private moorings vs. the town moorings ensued.

Commissioner Brown left at 8:40 p.m.

Commissioner Swistak – during the review of the zoning ordinance amendments during the use tables discussion they discussed adding a lunchroom definition but as of today it is not defined.

Andrew Weicker – West Ferry -The anticipated customer base of people purchasing a sandwich is boaters?

Alison Eichler, owner of Dutch Harbor Boat Yard said the majority of the people are day boaters. Their transient slips are a big part of their income and those boaters have no car.

Fred Brown approved this use under the code because it is listed as a permitted use in CW.

Bucky Brennan thinks the parking calculation he did was 1 additional space to meet his requirement. He does not think it is a grandfathered nonconforming pre existing use. He is ok with that and now you have the burden of proof to show 1 more space is needed. We all want access to the water. He thinks it is not a water related use.

Kate Smith agrees with the concept about it being an amenity, the real crux is parking. We are adding a new use, an eatery, how will you be able to control it?

Commissioner Swistak asked, "Is it a Newport business catering to an off site business or will it have a Narragansett address?" Which Town collects the meal tax? That matters to him.

Spencer Potter – I want to remind you this is the nose of the camel under the tent.

Randy White – 14 Westwood Rd. - you underestimate the attractiveness of the area. He is also concerned about the control, he is encouraged by the fact that it is for the boaters only and the only seating will be the picnic tables.

The Eichlers are letting Peter Liberati try this without charging the first year. Limiting the number of picnic tables is the decision of this board. They are there now.

Ken Newman 23 Ave B – most important is the parking concept. This is a great idea. The purview of this committee, it's your responsibility. He does not restrict the use of his private beach, what he would say is he would not want to tie their hands with the hours but dinner is a little more than lunchroom on the other hand the town does not do much by keeping the area clean the Eichlers do it, the houses south is where there will be impact from the music, you may underestimate how nice this will be. His biggest concern is parking on the front line as long as it isn't a destination for people other than boaters. Be very specific and make sure it does not expand.

Commissioner Girard **reminded the commission** ~~said~~ this is a permitted use and they are here for development plan review.

Maya White – 14 Westwood Dr. – how about a sticker system for parking your car at West Ferry? The town will not do that she was answered although some people in the audience agreed with her but that is an enforcement issue.

Bucky Brennan asked if DPR allows parking requirements to be addressed.

Commissioner Girard stated they are making a recommendation to zoning. The Zoning Board will make the decision.

Commissioner Holland said most of this is speculation on what could happen with regards to parking, it is a permitted use. Will there be an increase in parking? Will this encourage outside people in addition to boaters to go there because of the sandwich shop? Why would anyone want

to go down there just to get a sandwich if parking is a half a mile up the road and since parking seems to be such an issue? It makes sense that the only customers are the ones that are parked there already.

A discussion ensued between the planning commissioners and the town solicitor regarding limiting the approval by recommending conditions and using a Sunset clause. With a sunset clause the applicant's approval will be for one year and then they will come back and ask for an extension but it would have to go before a more formal review. Granting approval for 1 year and then reviewing it at that point they can extend for 5 years or more.

Commissioner Swistak asked if we can require this to be a Jamestown address so that the town will benefit from the meal taxes etc. This is not something this board has any control over stated Mr. Rugeiro.

Commissioner Swistak made a motion that Commissioner Girard seconded to draft a recommendation to the Zoning Board for preliminary approval and that the Town Planner will prepare it with the following conditions or restrictions;

- Reviewed in 1 year by the Planning Commission
- Hours of operation will be no greater than 8am to 6pm and to allow for only 30 minutes of prep time prior to opening and 30 minutes clean up after closing;
- No additional seating will be added and it will not exceed the 5 existing picnic tables
- No cooking on site. Only equipment necessary to handle prepared meals such as microwave and electric heating elements
- No external machinery or equipment such as generators or coolers
- No additional signage other than what was described in the plan and conforms to Zoning
- No externally projected music or sounds of music on exterior of building
- No additional lighting since the operation will occur during daylight hours

Commissioner Bennett suggested hours of 8-4 p.m., Commissioner Girard reminded her that the majority of the board has agreed to 8-6 p.m.

Commissioner Swistak asked if in the draft we can articulate that the season coincides with the lease of Town Land.

This will come back to the Board for final review and approval.

So unanimously voted.

## **2. FY 2009-2010 Planning Budget – Planning Commission Review**

The Planning Commission often reviews the yearly Planning budget stated Town Planner Lisa Bryer. It is the same as last year with a few changes. The grant writer and the architect review line item have been eliminated. The Town Administrator promised her that if we need funding the town will get it out of emergencies and incidentals. If we need it we have it this is just to keep the budget down and we have not used either very much in the past year. We have the ability to charge applicants remember under Section 410 of the Zoning Ordinance for an architect. This line item is for if the Planning Commission wanted to hire an architect on our behalf then it will have to come out of emergencies and incidentals.

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Commissioner Girard made a motion to approve the budget which was seconded by Commissioner Swistak. So unanimously voted.

A motion to adjourn at 9:45 p.m. was made by Commissioner Holland and seconded by Commissioner Bennett. So unanimously voted.

Attest:



Cynthia L Reppe

*This meeting was digitally recorded*