

Approved As Written
PLANNING COMMISSION MINUTES
November 18, 2015
7:00 PM
Jamestown Town Hall
93 Narragansett Ave.

I. Call to Order and Roll Call

The meeting was called to order at 7:00 p.m. and the following members were present:

Michael Swistak – Chair	Duncan Pendlebury – Vice Chair
Rosemary Enright – Secretary	Mick Cochran
Bernie Pfeiffer	Michael Smith

Also present:

Lisa Bryer, AICP – Town Planner
Wyatt Brochu – Town Solicitor
Justin Jobin – Town Environmental Scientist
Cinthia Reppe – Planning Assistant
John Connors
Victor Bell

II. Approval of Minutes November 4, 2015

A motion was made by Commissioner Enright and seconded by Commissioner Pendlebury to accept the minutes with the following change on Page 3, 2nd paragraph;

It is to protect the wetland said Mr. Jobin and we want to increase the buffer because of the nitrates in that area.

So unanimously voted.

III. Correspondence – nothing at this time

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

V. Reports – nothing at this time

1. Town Planner’s Report
2. Chairpersons report
3. Town Committees
4. Sub Committees

VI. Old Business

1. John Connors – Plat 16 Lot 222, Frigate Street – 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 foot freshwater wetland setback – Recommendation to the Zoning Board – Continued

Commissioner Swistak stated the testimony was wrapped up at the last meeting and we continued this application so that a draft a motion could be finalized and reviewed at this meeting.

Mr. Connors asked Commissioner Swistak if the PC is recommending denial of 308 and approval of 314. Yes said Commissioner Swistak. Commissioner Pfeiffer said during the straw poll there were 2 issues in his mind and the relief required was a lot.

With the concurrence of the applicant, Commissioner Swistak made a motion to suspend reading of the findings of fact and conditions of approval with the changes already discussed, Commissioner Cochran seconded the motion. All in favor.

A motion was made by Commissioner Cochran and seconded by Commissioner Smith to recommend to the Jamestown Zoning Board, denial of the application John Connors – Assessor's Plat 16 Lot 222; being reviewed under Zoning Ordinance Section 308 – Setback to Freshwater Wetlands and Section 314 - High Groundwater Table and Impervious Overlay District Sub-district A review in accordance with the plans entitled **Town Submission, For John Connors located at Pole #20 Frigate Street, Jamestown, RI, dated 10/1/15 and Wetlands Biologist by Natural Resource Services Inc. dated 10/16/15**. The recommendation for denial is based on the following findings of fact:

Findings of Fact Section 314 and 308

The applicant is proposing to construct a two bedroom 26' x 38' dwelling on Lot 222 totaling 8,332 square feet.

1. Applicant has obtained RI DEM approval for an ISDS/OWTS for a two-bedroom dwelling. This approval includes a deed restriction requirement, limiting the dwelling to no more than two bedrooms.
2. The relief necessary conflicts with our responsibility to prevent further impacts where intense development in combination with limited land development suitability have resulted in localized flooding, incidents of groundwater contamination, low well yields and salt water intrusion.
3. The relief necessary conflicts with our responsibility as outlined in the Jamestown Comprehensive Plan Open Space Element, updated in 2015, to protect the island's vulnerable and limited water supplies by maintaining maximum groundwater recharge of rainfall and treated wastewater to replenish drinking water supplies and avoid salt-water intrusion.

Page 126:

Due to public health implications and a limited water supply, resources such as ground water recharge areas, including wetlands and public drinking water supplies must be given the highest priority for protection.

Ground water recharge areas include wetlands throughout the Jamestown Shores neighborhoods and the north end of the Island.

Policy #3: *Maintain and improve the quality of Jamestown's public and private water supplies*

Page 265 – Action Plan

Review for amendment Section 308 of the Jamestown Zoning Ordinance to protect development from impacting groundwater resources and other natural resources.

Policy #5: *Immediately act to manage, protect and restore groundwater resources in dense rural areas.*

4. The relief necessary conflicts with our responsibility to ensure environmental compatibility and safeguards to protect the natural environment

Page 28:

In addition to farmland, other areas of Jamestown need to be protected to safeguard the Island's natural environment and finite resources. Areas worthy of preservation and protection from development include: the public drinking water supply watershed; wetlands, both coastal and freshwater areas; scenic views; historic resources; unique and rare habitats; large acres of habitats; linkages connecting significant open spaces; properties that will help to protect the Jamestown Shores water quantity and quality, and any properties whose preservation and protection will protect the water resources of Jamestown.

5. The relief necessary conflicts with our responsibility to strictly enforce the 150 ft. setback of ISDS (OWTS) from wetlands per the Jamestown Comprehensive Plan – Natural Resources/Water Resources.

Page 91:

A major concern in Jamestown is the proper placement of OWTS. Section 308 of the Zoning Ordinance prohibits the construction or location of sewage disposal beds, seepage pits, cesspools or disposal trenches or other facilities designed to leach liquid wastes into soil within 150 feet of a bog, floodplain, pond, marsh and swamp as defined in the ordinance. Because of the Town's recognition of the importance of wetland quality protection, the requirements of this section are more restrictive than the State's requirements.

Page 266 – Action Plan

Strictly enforce the 150 foot setback of OWTS from wetlands.

6. The relief requested contradicts the efforts by the Town of Jamestown to protect this fragile wetland/ watershed area by limiting development and preventing overdevelopment – notable in this effort is the purchase of a significant amount of acreage and permanently protect it from any development.

Jamestown Comprehensive Plan

Page 83:

The primary problem with the water quantity in Jamestown is in areas of high density in the rural district. Density in the Jamestown Shores area is between 2 to 4 homes per acre. Development of this density would utilize between 400 to

800 gallons of water per day per acre. This usage is more than the total available groundwater supply and does not include a buffer. Development density of this magnitude will result in overdrafts from the groundwater supply, especially during droughts or times of heavy seasonal water usage.

By contrast groundwater withdrawals from areas with large lot zoning (two to five acres) should not significantly impact groundwater levels, especially if developed as single family homes with OWTS. With prudent use, drilled wells will probably not go permanently dry and water levels will eventually recover with precipitation. There should be little concern for groundwater quantity with prudent use (absent a drought) if residential density is controlled and the water used is returned to the ground through OWTS.

In areas of high-density development, there is a serious concern for the groundwater supply. The Town attempted to control density in the Jamestown Shores area with the adoption of a lot-merger provision (1967) in addition to rezoning to R-40, which requires a minimum lot size of 40,000 square feet. Even still, there are many substandard lots with dwellings and many grandfathered substandard lots eligible for residential development.

These findings demonstrate that the high house density has adversely affected groundwater quality in Jamestown Shores area.

7. The applicants OWTS permit from RIDEM indicates the leach field is approximately 51' from a freshwater wetland edge at the nearest point. This location requires a variance of 99' (66%) based on the 150' wetland setback requirement of the Zoning Ordinance 82- 308.
8. The site of the proposed project is in an area of high density development, the Town is concerned with protecting water quality and quantity, as documented by the Jamestown Comprehensive Plan.
9. Based on soil evaluation reports, the subject lot is in sub-district A.
10. The RI DEM approved a variance regarding depth to groundwater, approving 20" where 24" is required.
11. The applicant's representative Dan Cotta, PE, President of American Engineering has submitted expert testimony before the Planning Commission on 11/4/15 as an expert witness with regards to OWTS Design and evidence that the proposed project meets the design requirements of Zoning Ordinance 82-314 High Ground Water Table and Impervious Overlay District as documented in a report prepared by American Engineering dated January 7, 2015.
12. The Jamestown Conservation Commission has reviewed the application and recommended against approval of the application as documented in their memorandum to the Planning Commission dated September 14, 2015. Specifically the Commission concluded that the proposed development represents an unacceptable addition to the cumulative impact in the area of the subject site.
13. The applicant has provided a Narrative by Natural Resources Services, Inc. dated October 16, 2015, addressing the standards in Zoning Section 82-308 - Setback from Freshwater Wetlands. The author of the report, Scott Rabideau, PWS was recognized as an expert witness and testified on behalf of the applicant that the proposed development will have no adverse impact.

14. Applicant indicated agreement with fertilizer prohibition requirement – but there are many questions as to how this would be enforced.
15. The applicant has submitted proposed plantings in the vegetative buffer as shown on the revegetation plan prepared by Natural Resource Services, Inc. in conjunction with American Engineering as referenced above.
16. No evidence was presented documenting that the proposed size of the dwelling could not be reduced. Dan Cotta, PE acknowledged that the size of the OWTS would be reduced if the house were reduced to one bedroom.
17. Jamestown Public Works Director Michael Gray, PE and Jamestown Environmental Scientist Justin Jobin provided correspondence to Lisa Bryer, Town Planner dated September 11, 2015 regarding the Connors application with respect to Zoning Section 314 and Section 308 (attached).
18. Jamestown Environmental Scientist Justin Jobin provided correspondence to Lisa Bryer, Town Planner dated October 28, 2015 regarding the Connors application with respect to Zoning Section 82-308 and 314 (attached).
19. Maureen Coleman representing the Conservation Commission, on November 4, 2015 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.
20. 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 Variance standard #1, under Sec 82-606.
21. Scott Rabideau testified that the adjacent wetland complex was fragmented and therefore no longer part of the wetland complex to the north. Several members of the Planning Commission disagreed with this assertion.
22. The Town of Jamestown has made a significant effort to preserve the larger regional 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. In addition, also with groundwater protection as their primary goal, the Town of Jamestown has adopted a comprehensive Waste Water Management Program including Zoning Ordinance regulations regarding development in the Jamestown Shores.
23. 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.
24. 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.
25. 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 or impervious cover 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.
26. The Planning Commission heard testimony from an abutter that his well had high concentration of nitrates already and was considered undrinkable. The stated concern was that the requested dimensional relief will cause the problem to continue and/or worsen.
27. The Planning Commission determined that the applicants proposed plan met all technical standards required by Sec 82-314.
28. There was no testimony offered by expert witnesses which contradicted the testimony of experts representing the applicant.
29. The property was purchased by the applicant less than two years ago.

Should the Zoning Board approve this application, against the recommendation of the Planning Commission we recommend, at a minimum, the following Conditions of Approval:

1. The proposed driveway, shall be maintained as a pervious surface and not be paved at any time in the future.
2. Permanent roofing or shelter over the outdoor deck shall be prohibited at any time.
3. The applicant shall submit a landscaping plan, stamped by a Landscape Architect as required in 82-308 4(b) prior to the Zoning Board hearing.
4. OWTS Maintenance Plan shall be submitted and recorded.
5. Storm water mitigation plan and maintenance requirements shall be recorded.
6. The RIDEM 2 bedroom deed restriction shall be recorded in Jamestown Land Evidence as required by RIDEM.
7. The radius map included in the packet shall depict flagged wetlands, RIGIS wetlands, private wells, and septic systems within 200 ft.

8. The Vegetative Buffer and markers shall be maintained in accordance with the NRS Report and the vegetated buffer zone should be permanently protected and undisturbed. This requirement should be recorded with the deed.

So voted:

Michael Swistak – Aye

Rosemary Enright – Aye

Bernie Pfeiffer - Abstain

Duncan Pendlebury – Aye

Mick Cochran - Aye

Michael Smith - Aye

Motion carries 5-1 Abstention

Commissioner Swistak suggested a motion to add to the communication to the zoning board the number of those in favor of denial, against denial and neutral. A discussion ensued and Commissioner Swistak withdrew the motion.

2. EPI Real Estate Holdings - Minor Subdivision with variances requested– Plat 9, Lot 211- 41 Narragansett Ave. – Jamestown, RI– Continued

Commissioner Swistak asked Mr. Bell if he wanted to present anything else at this time. He presented the planning commission with a map of the lots and their sizes in his surrounding area. There are 9 lots that are non-conforming by size in the east village area.

Mr. Bell wants to add a finding of fact and include it in with the other findings that states since the time his building was done in 2008 the zoning has been changed and he now has sufficient parking available. It is no longer substandard. EPI wants to utilize a portion of the basement.

Commissioner Pendlebury would feel better if he had a better understanding of what the zoning board had approved. The standard for a subdivision lot is to not create a lot that is substandard or one that needs relief. Mr. Bell said they have not created something that allows him to not subdivide the lot. This has never been two lots to Mr. Bells knowledge. They have owned it since 2001-2002.

The planning commission is looking at what the hardship is for him asking for this subdivision. He read from the following letter:

EPI Real Estate Holdings, owned by Lynn & Victor Bell who have resided at 23 Ocean Ave since 1976 are proposing to subdivide plot 9 lot 211 into two lots as labeled Lot A and Lot B. Lot A contains an existing 2 family dwelling built in the 1900's which is a property of distinction (purple book). Lot B is an office building built by EPI Real Estate and approved by the Jamestown Planning and Zoning Boards in 2008/09. Prior to the construction of the office building a single family home with an adjacent garage was located on Lot B.

The Bells' have taken great pride in making this property a model for Jamestown. The office building is constructed to meet exceptional environmental standards. The building has geothermal HVAC, 24 solar panels with net metering into the grid, 4 green roofs with plantings that require zero water use and minimize the heat island effect. The grounds include vegetable and herb gardens and all walkways are made of pervious pavers. EPI Real Estate also gifted and facilitated the reuse of the existing single family house that had been

on Lot B. EPI Real Estate is not proposing to make any structural changes to the buildings on Lots A or B.

Lot A is residential with 2 rental units. Lot B is an office building that house the headquarters of Environmental Packaging International and other office tenants. Over the years EPI's work force has changed, with some of it's staff being located globally and working remotely. Due to this change EPI Real Estate presently leases prime office space to other companies.

The Bells' are requesting this minor subdivision in order that two totally independent structures, one being totally residential and one being commercial can be on independent lots. As the Bells' reach their retirement age this would enable them to choose to sell one lot and maintain a residence in the other.

In accordance with Sec. 82-606 EPI Real Estate is requesting this variance for relief

- 1. That the hardship is due to the unique character of the land and structures.
 - a. As both the historical and present structures would not allow the creation of Lot A to contain 5,000 sf.**
- 2. 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;*
- 3. 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 ordinance [this chapter] or the comprehensive plan upon which the ordinance [this chapter] is based;
 - a. No changes will be made to the existing structures,*
 - b. As shown in the attached zoning map 16 lots within one block in all directions have a lot size of less than 5,000 sf, 9 of which have lot sizes smaller than being proposed by the applicant.**
- 4. That the relief to be granted is the least relief necessary
 - a. Lot A is the maximum lot size possible given the dimensions of the existing building which we propose to become Lot B.**

Mr. Bellsaid if he could configure the lot a bit different he might have the parking he needs but then there would be other variances he would need.

Commissioner Swistak said Mr. Bell stated that he needs more flexibility to manage these properties. Mr. Bell has contacted the banks but they will not finance if they are made intocondominiums. One is commercial use and one is residential use. The property was listed as a whole and did not sell.

Commissioner Swistak said if the subdivision were granted it would not look any different then it does today. The question is how do we do this? In terms of lot coverage and frontage, they are existing buildings and in 2009 they agreed to some of the variances. It comes down to the parking issues in Commissioner Swistak's opinion. Commissioner Pendlebury said they have always been non-conforming pre-existing lots. Commissioner Enright said she is not as concerned about the frontage but in creating smaller lots disturbs her also, more than the parking does.

Commissioner Pendlebury talked about the zoning change and now we are back to square one. Lisa Bryer said we are assuming that the front building is going to be residential forever but that is subject to change, then you no longer have an excess of parking but there is sufficient parking on the street (5 spaces required) if it becomes commercial. A discussion ensued regarding parking. Mr. Bell said he has only 4 or 5 times seen his parking full and that was during fireworks or other big events in town.

Town Solicitor Wyatt Brochu said it should be discussed with the building official if that is what the parking requirement should be. Mr. Costa also needs to determine if parcel A should be what the ordinance says. Mr. Bell said when they reviewed the parking even if it became an office they have 5 spaces. Can zoning restrict it to a non residential use?

Commissioner Smith asked about findings of fact #11.

If the basement remained restricted to storage use as the Zoning Board required, they can reduce the number of parking spaces needed. Mr. Bell said they require at least 330 sq. ft. for GFA purposes in the basement. They lost 1 space on Clinton Ave. because it straddles the two lots and they can do it and then not limit it. Mr. Bell said he has 11. They would be 1 short if we allowed him 380 sq ft in the basement. Bell does not want any restrictions in the basement. Commissioner Smith said are we going to approve it or not? Approve with variance of 4 spaces?

Mr. Bell said he can put agreements into the deeds restricting parking at certain times.

Swistak asked a question back to the basement do you want relief for 4 spaces or 3 spaces or how much?

With the concurrence of the applicant, a motion was made by Commissioner Swistak to not read the motion in it's entirety Commissioner Pendlebury seconded the motion. So unanimously voted.

Commissioner Swistak made a motion that was seconded by Commissioner Pfeiffer

At a meeting of the Planning Commission on November 18, 2015, the Planning Commission voted to Grant Preliminary Plan approval in accordance with the Town of Jamestown Subdivision Regulations, RIGL 45-23-37 and the plans entitled "**EPI Minor Subdivision Plan; A.P.9 Lot 211; 41 Narragansett Avenue, Jamestown, RI**; prepared by **Michael A. Fontaine, PLS, 593 Green Hill Beach Road, South Kingstown, RI 02879**; dated **10-15-15** based on the following Findings of Fact and subject to the following Conditions of Approval:

A. Findings of Fact

The Board makes the following findings:

1. The subdivision is not consistent with the requirements of the Jamestown Comprehensive Plan since Lot A does not meet the density requirement:
2. Neither lot in the subdivision conforms to the standards and provisions of the Jamestown Zoning Ordinance. Lot A requires a variance for lot size, frontage buildout, Lot B needs parking relief, and a variance for frontage buildout and rear setback.
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. Both buildings and lots are connected to the public sewer system;

4. There will be no significant negative environmental impacts from the proposed development as shown on the plans, with all required conditions for approval;
 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. Both lots are developed;
 6. All subdivision lots have adequate and permanent physical access to a public street, namely, Narragansett Avenue and Clinton 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 with the easements in place for cross access with lot 212, for adequate surface water runoff which will not change because of this subdivision, and for a suitable building site 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. No increase in runoff is proposed by this subdivision since both lots are developed;
 9. All lots in the subdivision have access to sufficient potable water for the intended use. Both lots in this subdivision are connected to public water and the site is located in the Urban Water District.; and one new lot, both with structures existing;
 10. The existing lot has an existing older two story residential style structure that fronts on Narragansett Avenue;
 11. The existing lot also has a newer, office building that was developed in 2009 with Development Plan approval by the Planning Commission and Zoning Board approval with the following relief:
 - Variance for Parking (23 needed 17 proposed and a restriction was put on the basement for only use as storage since without use of that space, they could meet the parking requirements)
 - Variance for no 5 foot buffer between parking and sidewalk or abutting property line
 - Special Use Permit for Mixed Use
- Since rewrite of the Zoning Ordinance in 2009, parking requirements have been modified.
12. Victor Bell, property owner, represented the application;
 13. Both Residential, professional and mixed uses are permitted by right in the CD Zoning District;
 14. If the older building on Lot A is converted to office, personal service, or retail trade 5 spaces would be required and 5 spaces are available on street to service Lot A;
 15. The Planning Commission agreed that parking issues and congestion on Clinton Ave. is significant in the area of this application;
 16. The applicant has provided an alternate area for bikes on site and therefore a bike rack is not required;
 17. Lot A has no parking available for the residential use once subdivided;
 18. That restriction #2 from the 2008 Zoning Board of Review approval dated July 23, be upheld, limited the basement to “storage only”. the request to lift this restriction does not meet the conditions for granting a variance in 82-606for parking, specifically it is not the least relief necessary;
 19. The applicant has testified that the reason for the request (hardship) is to provide more flexibility in order to sell the lots separately.

B. Conditions of Approval

1. Zoning Board of Review approval shall be received prior to the recording of the subdivision for variances for parking and setbacks as needed:
 - 1) Lot A:
 - a) Lot Size, 4059 sq. ft. proposed, 5,000 sq. ft. required;
 - b) Frontage buildout, 52% proposed, 60% required;
 - c) A special use permit for shared parking will be required for two spots since no on-site parking is provided for the residential use as required.
 - 2) Lot B:
 - a) Parking, 11 spaces proposed, 12 spaces required. This is based on 2,400 sq. ft. gross leasable floor area which includes 380 square feet of basement. The remaining 640 square feet of gross leasable floor area in the basement is restricted to storage;
 - b) Rear yard setback, 4.9' proposed, 12' required;
 - c) Frontage buildout, 28% proposed, 60% required.
2. That payment of a fee in-lieu-of land dedication shall not be required for this subdivision since both lots are developed;
3. Make a correction to the site plan changing the parking need from 11 spaces to 12 spaces.
4. Granite monumentsshall be placed at all corner points at the new property line prior to final approval;
5. The Planning Commission delegates final plan review to the Town Planner with the signature of the Planning Chair to appear on the Final Record Plat;
6. This approval shall be recorded with the Town Clerk within 20 days of receipt of approval; and,
7. This approval shall expire one year from the date of approval by the Planning Commission unless Zoning Board approval and final approval are received within that time.

VII. New Business – nothing at this time

VIII. Adjournment

A motion to adjourn at 9:10 p.m. was made by Commissioner Cochran and seconded by Commissioner Enright. So unanimously voted.

Attest:



Cynthia L Reppe