

**Approved as amended**  
**PLANNING COMMISSION MINUTES**  
**May 17, 2023**  
**7:00 PM**  
**Jamestown Town Hall**  
**93 Narragansett Ave.**

**I. Call to Order and Roll Call**

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

Michael Swistak – Chair	Duncan Pendlebury – Vice Chair
Rosemary Enright - Secretary	Diane Harrison
Bernie Pfeiffer	Dana Prestigiacomio

Not present: Mick Cochran

Also present:

Lisa Bryer, AICP – Town Planner  
Carrie Kolb – Planning Assistant  
Wyatt Brochu, Esq. – Ruggiero, Brochu & Petrarca  
John Aquino, applicant  
Michael Junge, applicant  
George Zainyeh, applicant  
Joseph Shekarchi, Esq. – Shekarchi Law  
Jason Clough, DiPrete Engineering

**II. Citizen’s Non-Agenda Item**

**III. Correspondence**

1. No items at this time

**IV. New Business**

1. High Groundwater Table and Impervious Overlay District – Zoning Ordinance Section 82-314 - Sub-district A review and recommendation to the Jamestown Zoning Board:
  - a. John Aquino: AP 14, Lot 27; 74 Seaside Drive, Jamestown, RI; review, discussion, and/or action, and/or vote;

The applicant, John Aquino represented the application before the Planning Commission. Aquino stated that he will be changing the house after 55 years. The size of the lot makes it

difficult to enlarge with an addition. The application proposes to build on the existing foundation. He has made the plans with respect to High Groundwater Table and Impervious Overlay District Sub-district A. He followed the advice of Jean Lambert with regards to the appropriate regulations. The septic was replaced in 2015 and that got the process started about thinking of re-doing the house. He mentioned that he will need to seek a variance from Zoning Board due to the location of the existing foundation. He said he thinks the application meets the needs for the high groundwater district.

Discussion ensued regarding building a new dwelling on the existing foundation and moving the deck. The current house will be removed and a new dwelling will be built on the existing foundation. Aquino said that reusing the existing foundation means that they do not have to create new concrete. The current deck at the front of the house will be removed. A new enclosed deck will be put on the back of the new dwelling so it faces the back yard.

Discussion on relief needed from Zoning Board ensued. Aquino said that the existing dwelling does not meet the setbacks for the front and side.

A motion was moved by Commissioner Swistak and seconded by Commissioner Enright as follows:

At the May 17, 2023 Planning Commission meeting, the Planning Commission voted unanimously to recommend to the Jamestown Zoning Board, approval of the application of John Aquino, applicant: AP 14, Lot 27, 74 Seaside Drive, Jamestown, RI; being reviewed under Zoning Ordinance Section 314 - High Groundwater Table and Impervious Overlay District Sub-District A reviewed in accordance with the plans entitled Site Plan for AP14 Lot 27, 74 Seaside Drive, in Jamestown RI" dated 3/21/23, prepared by Commonwealth Engineers and Consultants, Inc.

The recommendation for approval is based on the following findings of facts and recommended conditions of approval as noted in the Memo from Jean Lambert, PE dated March 23, 2023 and amended at the Planning Commission meeting:

### **Findings of Fact Section 314**

#### **Existing Site**

1. The property is 29,516 square feet (sf) in area;
2. The existing site is developed with a house, patio, shed and paved driveway (total existing impervious area is **1308 sf or 4.4%**);
3. Topography on the lot slopes from east to west (towards Seaside Drive) on the site;
4. There are no freshwater wetlands on the property;
5. Soil evaluation results show that the site falls under **Sub-district "A"** requirements of the High Groundwater Table and Impervious Overlay District with 14" to the seasonal highwater table and 32" to impervious soil;
6. The maximum impervious cover allowed is **10.0% or 2000 sf** (10% of 29516 = 2952 >2000sf);

Proposed Site

7. The applicant is proposing to demolish the existing house and rebuild on the existing foundation; the new home will add rooftop over the existing rear porch. The existing paved driveway will be removed and replaced with a pervious crushed stone driveway;
8. The existing OWTS (RIDEM #1515-0032: 5-bedroom SeptiTech to BSF) is current for maintenance (last inspection March 2023);
9. The total proposed impervious cover will be **1385 sf (4.7%)**;
10. A rain garden is proposed to mitigate the increase stormwater runoff associated with the site improvements. A rain garden with a total treatment volume of 88 cf will be installed (84 cf required);
11. The proposed project complies with the requirements of the HGWT Ordinance;
12. The site is an existing nonconforming lot; dimensional variances will be required at zoning for the front (40' required) and corner (30' required) setbacks;
13. Jamestown Engineer Jean Lambert provided correspondence to the Building File and Lisa Bryer, Town Planner dated March 23, 2023 regarding the application (attached).

**Recommended Conditions of Approval**

1. Erosion and sediment controls must be installed at the down gradient limits of site disturbance and maintained until stabilization of the site is attained;
2. After installation, Maintenance and inspection of the existing OWTS shall continue as required by the Town Onsite Wastewater Management Ordinance;
3. The rain gardens shown on the approved site plans must be installed and maintained as outlined on the notes on the approved site plan and the operation and maintenance plan. The Operation and Maintenance (O & M) Plan (reproduced in 8.5" x 11" for the stormwater mitigation (rain garden) shall be recorded in the Office of the Town Clerk with the Zoning Approval and evidence of such shall be provided to the Zoning Enforcement Officer as well as the Planning Department;
4. Any additional future site work including a change to the driveway surface that increases the area of impervious coverage will require a review following the requirements of the High Groundwater Ordinance.

So voted:

Commissioner Pendlebury – aye      Commissioner Enright – aye  
Commissioner Harrison – aye      Commissioner Pfeiffer – aye  
Commissioner Prestigiacommo – aye      Commissioner Swistak – aye  
Motion carries 6-0

2. High Groundwater Table and Impervious Overlay District – Zoning Ordinance Section 82-314 - Sub-district B review and recommendation to the Jamestown Zoning Board:

- a. Michael Junge: AP 14, Lot 386; 4 Galley Street, Jamestown, RI; review, discussion, and/or action, and/or vote;

The applicant, Michael Junge represented the application before the Planning Commission. His home is an older property that was built before the current zoning ordinances were enacted. His house was built on land that was broken up into two small lots and one double lot. His proposed plans are to build a 14x20 foot garage on back side of property and the garage will need a variance from Zoning Board for setbacks.

Discussion of increasing impervious coverage on a lot that is already exceeding the percentage of impervious coverage ensued. Junge's lot is small and already exceeds the percentage of impervious coverage and the percentages would be increased from 20% to 24%. Commissioner Enright expressed concern over the increase. There is a shed on the lot where there is a well and hot water heater are located. Junge said that he hopes that there is some allowance that can be made.

Discussion of space, size and location of proposed garage ensued. There is enough space for the garage on the right side of the property. The left side of the property has the well and OWTS. The garage would be close to the property line to maximize the square footage. The garage would not largely be seen from the street. Commissioner Swistak asked if a smaller garage could be built. Junge replied that he is already over the 15% of impervious coverage and it's a question of the water being able to go through the ground; he has Cedar Hill Farm and Watson Farm next to his property.

Discussion of location of rain garden and stormwater mitigation ensued. Commissioner Pendlebury expressed concern that the sketch provided showed the rain garden was located in front of the garage and would be driven through to get a car in the garage. Junge said that the car would not be in the garage year-round, just when it snows, and a large portion of the garage would be for wood working, which is currently in one of the bedrooms in the house. Junge said that Jean Lambert, PE recommended a larger rain garden to meet the ordinance requirements. The current house has gutters that drain into the ground with a slight slope.

Discussion of examples of mitigation ensued. Installing a new OWTS and rain gardens are examples of mitigation features. Bryer said that engineers can install underground infiltrators or direct water under driveways but that high groundwater is a problem with maintaining the necessary separation to groundwater. Commission Pendlebury said that a second drainage system can distribute more water to resolve the fact that there is too much imperious coverage. Junge said that he thinks he meets the spirit and intent of the ordinance because of all the open land around him.

Discussion of groundwater testing ensued. Commissioner Prestigiacomo asked why the groundwater has not been tested since 2003. Junge said that if there was change it would not be that different.

Commissioner Swistak asked if there was a hardship? Junge said yes that he lives on a small lot in a small house, that was built before zoning ordinances were enacted.

Commissioner Swistak explained that the Planning Commission has seen a lot of high groundwater applications. There is no precedent. The Planning Commission listens to each application and tries to be fair and consistent. Commissioner Swistak said that the Planning Commission enforces and defends the ordinances of the town. Junge stated that he differs in opinion. Commissioner Pendlebury said that the Planning Commission votes in accordance with what the ordinance says. Junge said that he disagrees.

Commissioner Swistak said that Junge can go to Zoning regardless of the outcome of their vote. Zoning does not need to follow the decision of the Planning Commission, but he is at risk. Junge said that is one of the reasons why he did not spend funds on a plan or soil test. Also, he could not get engineers or planners to get back to him and he thinks it is because he was already over the allowed percentage. He said that he would like a vote and recommendation from the Planning Commission.

A motion was moved by Commissioner Swistak and seconded by Commissioner Enright as follows:

At the May 17, 2023 Planning Commission meeting, the Planning Commission voted to recommend to the Jamestown Zoning Board, for the application of Michael Junge, AP 14, Lot 386; 4 Galley Street, Jamestown RI; being reviewed under Zoning Ordinance Section 82-314 – High Groundwater Table and Impervious Overly District Sub-District B in accordance with the plans, prepared by the applicant for the above referenced property.

So voted:

Commissioner Pendlebury – no                      Commissioner Enright – no

Commissioner Harrison – no                      Commissioner Pfeiffer – no

Commissioner Prestigiacomio – no              Commissioner Swistak – no

Motion denied 0-6.

The recommendation for denial is based on the following findings of facts as noted in the Memo from Jean Lambert, PE dated March 27, 2023 and Planning Commission review of 82-314 as amended at the Planning Commission meeting:

### **Findings of Fact Section 82-314**

Existing Conditions:

1. The existing site is 7,350 square feet (sf) in area and located in a R-40 zone where 40,000 sf is the minimum lot size. The lot is existing nonconforming by size;
2. The existing site is developed with a house, pervious driveway, and shed (total existing impervious area is approximately **1,510 sf or 20.5%**);

3. The existing 4-bedroom OWTS (RIDEM #0315-1516: Advantex to bottomless sand filter) is to remain. The system was last maintained November 2022;
4. Topography on the lot slopes from east to west on the site;
5. There are no freshwater wetlands on the property;
6. Soil evaluation results and the RIDEM inspector determination show that the site falls under **Sub-district "B"** requirements of the High Groundwater Table and Impervious Overlay District with 60" to the seasonal highwater table and 60" to impervious soil;
7. The existing site exceeds the allowable impervious area by 407 sf (1510 – 1103 = 407). The maximum Impervious cover allowed is **15% or 1103 sf**;
8. The applicant represented the application at the Planning Commission meeting on May 17, 2023;
9. The applicant, Michael Junge testified that he feels strongly that the application should be approved because the stormwater mitigation is proposed to be completed in accordance with the ordinance.

Proposed Site Conditions:

10. The applicant is proposing to construct a new 14' x 20' shed/garage (280 sf) on the site. The existing house and shed are to remain;
11. The total proposed impervious cover will be **1790 sf (24.3%)**;
12. A rain garden is proposed to provide mitigation of the 10-year storm peak flow for the new 280 sf rooftop. A rain garden with a total treatment volume of 114 cf is will be installed;
13. **The project exceeds the 15% allowable impervious cover** as stated in section 82-314 B5, but otherwise complies with the requirements of the HGWT;
14. The applicant has indicated in their narrative that "a 5' variance, towards two unbuildable areas" is requested. A variance from the Zoning Board will be required for this setback relief;
15. Jamestown Engineer Jean Lambert provided correspondence to the Building File and Lisa Bryer, Town Planner dated March 27, 2023 regarding the application (attached).

- b. George and Ann Zainyeh: AP 3, Lot 127; 433 Seaside Drive, Jamestown; review, discussion, and/or action, and/or vote;

Joseph Shekarchi, Esq., of Shekarchi Law represented the applicant. George Zainyeh. Jason Clough, PE, of DiPrete Engineering presented his education and credentials to the Planning Commission. Commissioner Swistak moved and Commissioner Pfeiffer seconded to accept Jason Clough, PE as an expert witness. All in favor.

Shekarchi said that the Zainyeh family have lived in Jamestown for a long time. They raised their kids in the home. They are looking to make the home compatible with the neighborhood and make it easier to get in and out of. The plans have taken an impervious part of the patio and made it pervious. The project will be net-zero impervious cover due to increased mitigation.

Clough stated that the property is a substandard lot of record. The existing impervious coverage is at 26.6%. The change of the patio from impervious to pervious creates a 3 sq ft decrease in impervious coverage and there is no net increase. The test holes dug for the water table place the property in category B. The water table is lower due to fill in excess of 55 inches.

Discussion ensued how the patio will become pervious? The gaps between the pavers and the stone reservoir underneath make the patio pervious. The blue stone pavers will be placed four inches apart, when the RI Guidelines for Stormwater show that two inches is sufficient.

Discussion of the driveway ensued. The U-shaped driveway is impervious and was installed in 2000 and at the time the high groundwater ordinance was not in place. Commissioner Swistak asked if the applicant would be willing to make the driveway a pervious surface when it needs to be replaced as a condition of approval? The applicant, George Zainyeh said that was acceptable.

Discussion of the soil testing process with the fill ensued. Clough explained that you cannot count the fill and that the test needs to be from original grade. The fill has been on the lot for 50 years. Shekarchi said that the area was filled-in in the 1950s. The example of taking an unbuildable lot and filing it in, then waiting a year or two, getting the soil re-tested and now it's a buildable lot was given as to why you cannot count fill.

A motion was moved by Commissioner Swistak and seconded by Commissioner Enright as follows:

At the May 17, 2023 Planning Commission meeting, the Planning Commission voted to recommend to the Jamestown Zoning Board, approval of the application of George A and Ann M Zainyeh, 433 Seaside Drive, AP 3, Lot 127, Jamestown RI; being reviewed under Zoning Ordinance Section 82-314 – High Groundwater Table and Impervious Overly District Sub-District B in accordance with the plans entitled “Site Layout Plan, 433 Seaside Drive, AP 3, Lot 127, Jamestown RI” dated 4/24/23, prepared by DiPrete Engineering. The supporting material prepared by DiPrete Engineering, Two Stafford Court, Cranston, RI 02920 for the above referenced property.

The recommendation for approval is based on the following findings of facts (and recommended conditions of approval) as noted in the Memo from Jean Lambert, PE dated May 3, 2023 and amended at the Planning Commission meeting:

#### **Findings of Fact Section 314**

Existing Conditions:

1. The existing site is 15,262 square feet (sf) (14,791 without wetland area) and located in a R-40 zone where 40,000 sf is the minimum lot size. The lot is existing nonconforming by size;
2. The Tax Assessor shows that it is a 3-bedroom house based on the current OWTS;
3. The existing site is developed with a 1,960 sf house, 1,356 sf impervious driveway and ancillary garden structures;
4. The property has an existing OWTS permit from RIDEM (#0015-2497) for three bedrooms. The OWTS has been maintained per Town Ordinance. The last inspection occurred 3/2022;
5. Topography on the lot slopes from east to west on the site, towards Narragansett Bay;
6. Soil testing indicates that the site falls under Sub-district B of the HGWT Ordinance (25" SHWT and 66" to Category 9 soils);
7. The **existing impervious cover on the site is 3,938 sf (26.6%)**; Sub-district B allows 15% impervious cover;
8. The property is within the jurisdiction of CRMC;
9. The applicant's representatives Joseph Shekarchi, Esq., of Shekarchi Law and Jason Clough, PE, of DiPrete Engineering, was accepted as an expert witness, at the Planning Commission meeting and present at the Planning Commission on May 17, 2023;
10. The patio converted from impervious to pervious as shown on the plans;

**Proposed Site Conditions:**

11. The property owners propose to convert the existing patio (260 sf) to a pervious patio and remove the existing house landing (56 sf). A small addition (169 sf) and landing (57 sf) will be added;
12. The proposed impervious cover on the site is **3,935 sf (26.6%)**;
13. There is a 3-sf reduction in impervious coverage on the lot (the overall percentage is unchanged). No stormwater mitigation is required; however, the proposed pervious patio will provide a reservoir for stormwater infiltration;
14. A reduction in overall impervious area of 3 sf is proposed;
15. **The project exceeds the 15% allowable impervious cover** but otherwise complies with the requirements of the HGWT;
16. Jamestown Engineer Jean Lambert provided correspondence to the Building File and Lisa Bryer, Town Planner dated May 3, 2023 regarding the application (attached);
17. The site conditions are improved by a slight reduction of impervious cover and the patio replacement to pervious pavers with gravel under for stormwater storage.

### **Recommended Conditions of Approval**

1. The existing site exceeds the allowable impervious surface area. The existing impervious area is 3,938 sf and the allowable impervious area is 2,218 sf. A variance from the Zoning Board will be required;
2. No additional bedrooms allowed;
3. Erosion and sediment controls must be installed at the down gradient limits of site disturbance and maintained until stabilization of the site is attained;
4. Maintenance and inspection of the existing OWTS shall continue as required by the Town Onsite Wastewater Management Ordinance;
5. Any future site work that increases the area of impervious coverage will require a review following the requirements of the High Groundwater Ordinance;
6. When driveway needs to be replaced, it will become a pervious surface.

So voted:

Commissioner Pendlebury – aye

Commissioner Enright – aye

Commissioner Harrison – aye

Commissioner Pfeiffer – aye

Commissioner Prestigiacomio – aye

Commissioner Swistak – aye

Motion carries 6-0

### **V. Old Business**

1. No items at this time.

### **VI. Reports**

#### 1. Planner's Report

##### A. Future meetings – topics and applications

The State has a 3-hour education requirement for Planning Commissions. The next municipal education session will be on May 31 from 5:30-8:30pm via Zoom. Commissioners can sign up by emailing Nancy Hess by May 26, and it takes care of the requirement for the year.

June 7 – no meeting

June 21 – Application for Communications Tower at 90 Carr Lane. There was a TRC meeting held and with lots of really great questions and answers.

July 5 – further discussion of Zoning Ordinance Updates .

Bryer said that the Town has received approval to go out to bid for Safe Routes to School.

Commissioner Swistak asked if a demolition permit was issued for casino house? Bryer said yes. Commissioner Enright said that the applicant did have to submit total historic report done by a professional historian. She was able tour the property, the floors are in great shape and there is a plan in place to try to save the chimney and fireplace.

Commissioner Swistak asked if there are bills to change the ADUs law in the legislature this session? Bryer said that there are two bills that are in discussion.

**VII. Approval of Minutes – review, discussion and/or action and/or vote**

1. May 3, 2023

A motion was moved by Commissioner Enright and seconded by Commissioner Pendlebury to approve the minutes from the May 3, 2023 meeting as amended. All in favor.

Page 4: paragraph one: changed to “ allowed in a residential zone.”

Page 4: #17: add “Need to ensure design guidelines are applied to multi-family structures. The same language used for development within the Village District should be applied to multi-family structures to be consistent.”

Page 4: #18: sentence 1: removed duplicate “with the”

Page 4: #18: sentence 5: change to “stormwater mitigation plans”

**VIII. Adjournment**

A motion to adjourn at 8:23pm was moved by Commissioner Swistak and seconded by Commissioner Enright. All in favor.

Attest:

Carrie Kolb