

**Approved As Written**  
**PLANNING COMMISSION MINUTES**  
**August 2, 2017**  
**7:30 PM**  
**Jamestown Town Hall**  
**93 Narragansett Ave.**

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

The meeting was called to order at 7:31 p.m. and the following members were present:

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

Also present:

Lisa Bryer, AICP – Town Planner  
Wyatt Brochu – Town Solicitor  
Jeff McCormick P.E.  
David Howard  
Betsy Taylor and Joe Semoneli

**II. Approval of Minutes July 5th, 2017**

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

**III. Correspondence**

1. FYI – Motion to Town Council – Re: East Ferry Improvement Project. Received.

**IV. Citizen's Non-Agenda Item**

**V. Reports**

Town Planner's Report – Lisa Bryer reported that the RFP for the zoning ordinance update is drafted and it should go out in the next few weeks.

- 1.
2. Chairpersons report
3. Town Committees
4. Sub Committees

## VI. New Business

### 1. **David & Marylou Howard – 59 Ferry St. – Plat 5 Lot 58 High Ground Water Table Impervious Layer Overlay District –Zoning Ordinance Section 82-314 Sub District A Review – Recommendation to Zoning**

Jeff McCormick, PE., represented the applicant David Howard. Commissioner Swistak asked him to review his resume and they would accept him as an expert witness. Commissioner Smith made a motion and Commissioner Pfeiffer seconded the motion to accept Mr. McCormick as an expert witness. So unanimously voted.

He reviewed the previous application and found that there was excess volume in the existing infiltration trench to accommodate the proposed construction. They are under the impervious cover, and it does not impact the OWTS because no new bedrooms are proposed.

Commissioner Enright is concerned about the closeness to the wetlands. It was clarified that it went through 308 and 314 previously and was denied by the Town and overturned by the court. Commissioner Swistak asked if that is a valid finding of fact?

Commissioner Swistak made a motion that was seconded by Commissioner Cochran to recommend to the Jamestown Zoning Board, approval of the application David and Marylou Howard – Assessor's Plat 5 Lot 58; being reviewed under Zoning Ordinance Section Section 314 - High Groundwater Table and Impervious Overlay District Sub-district A review in accordance with the plan entitled Site Plan, 59 Ferry Street, Jamestown, RI AP 5 Lot 58, Howard Residence, David and Marylou Howard, Sheet 2 of 5. Undated, by DiPrete Engineering, Inc. The recommendation for approval is based on the following findings of facts as amended:

#### Findings of Fact Section 314

The applicant owns a 14,400-square foot lot with an existing dwelling, gravel driveway, shed, well and an advanced treatment OWTS. The applicant is proposing to construct a porch addition to the existing 1,120 square foot dwelling consisting of a 160-square foot covered porch. The existing house and shed are 1,120 square feet total.

1. This dwelling was originally reviewed in 2005 under 314 & 308 by the Jamestown Zoning Board of Review and ultimately granted a special use permit by the Superior Court April of 2006.
2. Based on soil evaluation reports, the subject lot is in sub-district A of the High Groundwater Table and Impervious Overlay District.
3. This parcel and home were the subject of a previous application for Section 314 approval. The Town denied the application and the decision was overturned in court.
4. Plat 5 Lot 58 has an existing, AdvanTex to Bottomless Sand Filter OWTS (RIDEM permit number #0215-0378). The OWTS is current for inspections and maintenance.
5. The existing impervious lot coverage for the subject lot is 7.8%. The proposed impervious cover is 8.8%. The maximum allowable impervious coverage for this site is 9%. This application requires a modification of the existing special use permit under Section 314.
6. The applicant's representative Jeff McCormick, P.E., represented the applicant before the Planning Commission on 8/2/17 with regards to the foundation trench.

7. The applicants engineer, Jeffrey M. McCormick has submitted a letter regarding the Water Volume Calculations for the site that was completed in 2005 for the site. His conclusion is that there is adequate volume to accept the additional 501 c.f. of volume from the proposed covered porch addition which will be connected to the existing down spout system. The existing BMP's provides treatment for the 1" water quality volume and provides storage for the increase in runoff from a 10-year frequency storm.
8. Jamestown Engineer Jean Lambert provided correspondence to Chris Costa, Building Official and Lisa Bryer, Town Planner dated July 14, 2017 regarding the Howard application with respect to Zoning Section 314 (attached) which notes that, the proposal, in her professional judgement, meets the requirements of the Ordinance.

### **Recommended Conditions of Approval**

1. A modification to the Special Use Permit for Section 314 is required from the Zoning Board of Review;
2. An Operation and Maintenance (O & M) Plan (reproduced in 8.5" x 11" for the stormwater mitigation foundation (infiltration) trench 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.
3. The OWTS must be inspected and maintained as required by the Town Onsite Wastewater Management Ordinance and Program.
4. An As-built plan should be provided to the Building Official at the completion of construction depicting the size and location of the porch addition shown on the proposed site plan.

So unanimously voted:

Michael Swistak – Aye  
Rosemary Enright – Aye  
Bernie Pfeiffer - Aye  
Mike Smith - Aye

Duncan Pendlebury – Aye  
Mick Cochran - Aye  
Dana Prestigiaco - Aye

### **2. Betsy Taylor – 45 Dory St. – Plat 3 Lot 147 – High Ground Water Table Impervious Layer Overlay District – Zoning Section 82-314 Sub District A Review – Recommendation to Zoning**

The applicant said the addition will be one story. They do not have dining room presently. The sheds were installed in 2000 and 2001. They will be using the same deck area and keeping the deck on top of the addition where it is now.

Commissioner Swistak reviewed the requirements of the ordinance and noted that they are already exceeding the ordinance with the sheds and are therefore grandfathered under section 314 of the Zoning Ordinance. The house is one bedroom.

The addition will not be putting on a new foundation but will be using the existing footings. The engineer recommended the rain garden to handle the runoff from the new addition.

A discussion ensued about whether either of the sheds are exempt from the ordinance based on the 120 square foot exemption permitted in the ordinance for raised structures. They will recalculate their impervious cover and come back.

Commissioner Enright made a motion to continue the application to the next meeting  
Commissioner Cochran seconded the motion. So unanimously voted.

### **3. FM Properties Inc. – 95 North Rd. – Plat 8 Lot 95 – 2 lot Minor Subdivision – Preliminary Approval**

Mike Hill represented the application. The property is located in the CL zone where 8,000 sq. ft. lots are permitted in that zone. This lot consists of 17,662 sq ft. and it has access to sewer and water because it is in the Urban Water District and the lot has been surveyed.

Commissioner Enright brought up the fact that lot B is greater than the 120 foot maximum frontage on Arnold Avenue which was her only issue at TRC. Frontage on North Rd. is 60 ft. A discussion ensued regarding this frontage issue. The existing building will be torn down. He is going to propose 2 duplexes and he will come back to planning for that approval. One on each lot.

There was a concern regarding drainage and making sure he is not connecting to the system on Arnold Avenue due to excess water issues at the bottom of Westwind Drive where this would be discharged. This will be discussed during development plan review. Mr. Hill said American Engineering is working on this issue. Commissioner Swistak asked about the two duplexes triggering affordable housing requirement. Commissioner Prestigiacomo questioned septic system issues.

A note can be made as a condition about the drainage issue for the future application regarding tying in to the existing stormwater system.

A motion was made by Commissioner Enright and seconded by Commissioner Pfeiffer  
To Grant Preliminary Plan Approval in accordance with the Town of Jamestown Subdivision Regulations, RIGL 45-23-37 and the plans entitled "Site Plan A.P. 8 Lot 95 for Jamestown Landing, A Minor Residential Subdivision located at 95 North Road, Jamestown, RI 02835,; prepared by American Engineering, Inc. 400 South County Trail – Suite A 201, Exeter, Rhode Island 02822, Phone (401) 294-4090; dated 6/27/17 based on the following Findings of Fact and subject to the following Conditions of Approval:

#### **A. Findings of Fact**

1. The subdivision is consistent with the requirements of the Jamestown Comprehensive Plan;
2. Each lot in the subdivision conforms to the standards and provisions of the Jamestown Zoning Ordinance. The property is zoned CL and both lots will be over 8,000 square feet in size and the existing garage will be removed. No building lot is designed and located in such a manner as to require relief from Article 3, Section 308 of the Zoning Ordinance as both lots will be serviced by public water and sewer;

3. There will be no significant negative environmental impacts from the proposed development as shown on the plans, with all required conditions for approval;
4. 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;
5. All subdivision lots have adequate and permanent physical access to a public street, namely, North Road and Arnold Avenue;
6. The subdivision provides for safe circulation of pedestrian and vehicular traffic, for adequate surface water runoff, for suitable building sites and for preservation of natural, historical, or cultural features that contribute to the attractiveness of the community;
7. The design and location of streets, building lots, utilities, drainage improvements, and other improvements in the subdivision minimize flooding and soil erosion;
8. All lots in the subdivision have access to sufficient potable water for the intended use. Both lots will be serviced by public water.

**B. Conditions of Approval**

1. The approval is for a total of 2 lots;
2. That payment of a fee in-lieu-of land dedication shall be required for this subdivision for all new dwelling units in the amount required by Article IIID of the Jamestown Subdivision Regulations. This fee shall be determined at the time of filing of the final plat and paid prior to recording of the final plan.
3. Granite monuments or where granite monument are not suitable, other suitable survey markers other than concrete, shall be placed at all corner points at the new property line;
4. The applicant has noted on the plan that the existing garage will be removed. All new structures shall meet the standards of Zoning Ordinance Article 11 and the dimensional requirements of Article 3;
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 30 days of signature; and,
7. This approval shall expire one year from the date of approval by the Planning Commission.
8. These lots are not permitted to tie into the existing drainage system on Arnold Avenue because it would exacerbate down gradient flooding issues.

So unanimously voted.

**VII. Old Business**

**1. Regulation of Marijuana Uses – Discussion**

Commissioner Swistak discussed being more restrictive at this point because we can always relax it later. The Planner developed a matrix showing the potential marijuana uses and the zoning districts in Jamestown, as requested by the Commission at the last meeting. Town Solicitor Brochu said the Commission must decide where these uses should be permitted, if anywhere, in town.

Solicitor Brochu, said that when you put something in zoning as a special use permit, it is a permitted use with potential conditions. You cannot deny it at that point because you think it is not a good use in that location. The courts now are very pro-property rights at this point. When looking at zoning regulatory framework and recognize that if it is an allowed use and requires a variance, it will most likely be granted. If not permitted as a use then the burden is very high because it is a use variance. They must prove that there is no other use that they can do on that lot if denied that use.

The Planner handed out a matrix that defined the uses and listed the zoning districts. Discussion on proposed uses in state law that did not pass and those that are already on the books based on the existing law on medical marijuana.

Solicitor Brochu suggested looking at uses: manufacturing, growing and distribution, public use. And then look at districts. Is it an agricultural use or a commercial use?

Commissioner Smith recommended putting a “no” in all districts for definitions in existing state law due to the size of our commercial districts.

Commissioner Cochran said from what he is reading crime and law breaking has not increased in Colorado. He is doing a lot of reading regarding this issue since we are tasked with creating an ordinance. Commissioner Pendlebury would like to hear from Chief Mello regarding code issues. Also water restriction issues.

Brochu lead a discussion on potential increase in crime and breaking the law, such as impaired driving. There is not standardized testing for marijuana like we have for drinking and driving.

It is agreed that there should be no’s in every block for existing uses. They want to discuss this issue with Chief Mello and also talk about the proposed state law and should we list those uses in our ordinance? Commissioner Enright would like to provide a compassion center in our commercial district but the definition is too comprehensive and therefore she agrees that it should be prohibited.

The Planning Commission may also like to have someone from the Attorney Generals office.

### **VIII. Adjournment**

A motion was made by Commissioner Enright and seconded by Commissioner Smith at 9:20 p.m. So unanimously voted.

Attest:

Lisa W. Bryer