

Approved as Amended 12-17-08
PLANNING COMMISSION MINUTES
December 3rd, 2008
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
Jean Brown Barry Holland
Richard Ventrone Alexandra Nickol
Nancy Bennett

Also present:

Lisa Bryer, AICP – Town Planner
Cynthia Reppe – Planning Assistant
Wyatt Brochu – Town Solicitor
John Murphy – Attorney
John Lawless – PE Whalerock Engineering
Maryann Oldewurtel

I. Approval of Minutes November 19th, 2008

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

Page 2 - last paragraph, first sentence – He is proposing to subdivide his property which consists of 26,405 sq ft into two lots, both conforming by size, one with 8,000 ~~26,405~~ sq ft the other with 18, 405.

Page 5 – 4th paragraph, last sentence – Whether or not this condition is reasonably related to the relief they are seeking ~~he~~ Attorney Brochu hesitates to address this question.....

Page 5 – 6th paragraph, Commissioner Girard said he (Girard) thinks Attorney Brochu's ~~your~~ interpretation is they cannot.....Mr. Brochu said in article 17 the standards of analysis for the Planning Commission is different than what the Zoning Board is looking at. So unanimously voted. Commissioner Brown Abstains.

II. Correspondence – nothing at this time

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

IV. Reports

1. Town Planner's Report
2. Chairpersons report
3. Town Committees
 - a. Harbor
 - b. Fort Getty

- c. Buildings and Facilities
 - d. Tree Preservation and Protection
 - e. Affordable Housing Committee
 - f. Wind Energy
 - g. North Rd. Bike Path Committee
4. Sub Committees

Commissioner Girard asked the Planning Commission if they were in agreement to allow the West Ferry residents to be given 15 minutes to discuss their issues since they were told at the last meeting that this would be discussed at tonight's meeting. The Planning Commission agreed. Commissioner Girard asked for a brief summary from a spokesperson and any additional comments could be made if they are different.

Mary Brennan – 238 Narragansett Ave. – Regarding the Change in S to Y **in the use table** she feels West Ferry neighborhood is a very unique neighborhood and some of these uses if they were permitted by right with the boat yard would not fit with the character of the neighborhood.

Craig Amerigan – 194 Narragansett Ave. – if you change CW to a Y he understands it that they still have to come before a board but the existing use really overflows the properties right now and the additional level of protection should still remain by leaving it **S some uses like a lunch room is allowed now with S special use permit but changing to mixed use it would be allowed by right.**

Ken Newman 23 Marine – right now as a functioning marina there are a lot of issues with the marina in the height of the summer. He thinks West Ferry should have a different designation than East Ferry.

Will Dunning – Avenue B - potential noise increase in the change allowing any type of restaurant would increase the noise level. Is not in favor of change from S to Y for mixed use.

Mary Brennan – 238 Narragansett Ave. can we look at all the uses right now?

Commissioner Girard stated this is on the agenda tonight if we have time to get to it and they are welcome to stay but there is not a guarantee that we will get to it.

Mary Brennan - Can the neighborhood be included in this process?

Commissioner Girard – All our meetings are public meetings and we welcome you all and appreciate the input. Lisa Bryer clarified the issue of concern to the West Ferry residents. It only affects the use – Mixed Use in the use table. That was proposed to change from an S to a Y in all commercial districts. This means that if both uses or even one use that are proposed under the mixed use category are only permitted by special use permit, it would still need a special use permit. It is only the mix of uses that is proposed to be permitted by right. I have no issue with leaving it as a special use permit in the CW district.

Commissioner Bennett said if they want to list the items they are concerned about can Ms. Brennan just tell us where the interests are? Ms. Brennan said the neighbors all want to leave it as it is now as far as S.

Commissioner Girard asked for a show of hands of the Planning Commission to see what they want to do regarding leaving the S as an S. Five ~~residents~~ **commissioners** raised their hands **in favor of leaving S as S.**

For those who look like they are leaving Commissioner Swistak said this is the next item under the zoning ordinance review and it may be discussed later.

Craig Amerigan – he understood what Ms. Bryer said, he thinks the s needs to stay there since there are y uses there now that could be a problem and he thinks the s should stay there because of that.

V. New Business

1. **Comprehensive Permit Application – 2 lot Subdivision – John Lawless Jr. – 14 Pemberton Ave. Jamestown, RI; Plat 8 Lot 473 - Public Hearing continued**

Commissioner Girard reopened the public hearing. Attorney John Murphy reviewed his opening statements again and cited state law regarding affordable housing and the comprehensive permit. This is a streamlined process. This is a handsome and modest project, the first for the Town of Jamestown. Mr. Lawless has worked very closely with the Planning department. This application is complete. Under Section 17 all planning professionals would agree there are no grounds to deny this application.

Mr. Murphy gave a synopsis of the application, 2 lots 1 affordable, 1 market rate. Regarding the rear house variance, there is sufficient land to be able to do this without the variance but they have learned from their experience that creating a new road is not good planning. Mr. Lawless is a licensed professional engineer and he will testify tonight, his drainage analysis was confirmed by our town engineer Mr. Mike Gray. This lot does not drain onto any other lot but other lots drain onto this lot. If there is winter puddling on his land now it may continue but will not increase and no runoff will increase either.

Cedar shingles and choice of building materials and aesthetics are not really before you Mr. Murphy said. Church Community Housing and the applicant will have to comply with the building codes and the zoning ordinances when they want to do construction. Mr. Lawless is using white cedar shingles on his new home. The new house will be on an 18000 sq ft lot; 8000 is required.

Attorney Murphy qualified Mr. John Lawless as a witness.

Attorney Murphy asked the questions, John Lawless answered the questions.

Where do you live? 14 Pemberton Ave., Jamestown RI

Are you a registered Professional Engineer in the State of RI? Yes since 1993

Have you testified as a licensed engineer before in this town? Yes both the Planning Commission and Zoning Board.

Have you testified in other towns in RI and do you have a copy of your resume? Yes and he handed his resume to Commissioner Girard and it will be entered into the record.

He will give expert testimony. Site engineering is his specialty. Commissioner Swistak made a motion to accept Mr. Lawless as an expert witness and Commissioner Girard seconded the motion. So unanimously voted.

Mr. Lawless then made a computer presentation on the screen. His property is lower than the surrounding properties and it will continue to be the case after construction. His property will not drain onto any other property in the area; his ground elevation is still 2 ½ ft higher than Pemberton Avenue and so the water leaves his property and flows to the street. The existing drainage pattern and the proposal will remain the same. He showed the slides and explained that his project will not increase offsite runoff. He showed a photo from a storm on Nov 25 there was 1.5 inches of rain. The site is very capable of handling the drainage and in the winter when the ground is frozen there is winter puddling which is exacerbated by a neighbors sump pump which is directed onto his lot; no sump pump or basement is proposed by his new house. The grade will be raised 20 inches and will be limited to the area directly around the perimeter of the house. A swale along the south side of the property to facilitate the drainage is proposed in addition to the infiltration basin and crushed stone driveway and rain barrels. Attorney Murphy asked if he is willing to agree the crushed stone driveway will remain there. He agreed.

Mr. Lawless addressed a letter received from a neighbor Mr. Cochran and he responded to some of the engineering points in the letter. This is not the first house that he has built in the village and he has built in the village before that had drainage issues and succeeded.

Commissioner Ventrone asked Attorney Brochu if we approve this tonight they come back for final approval correct. Mr. Brochu said if you ask for certain things then you can put that in the conditions. Commissioner Ventrone would like the siding changed on the existing house.

Commissioner Ventrone would like to know what the new house will look like because what guarantees do we have that it will look nice.

Attorney Brochu said the Planning Commission cannot say he has to live there in the future or he cannot sell the lot.

Commissioner Ventrone understands the drainage issues and he feels Mr. Lawless is not exacerbating the drainage issues. Commissioner Ventrone has a problem with what the new house will look like.

Commissioner Ventrone stated to Mr. Brochu, we don't know what will be built there we know the dimensions but we don't know what he is proposing.

Attorney Murphy said it has to be consistent with the building codes and the zoning ordinance. Commissioner Ventrone wants to see what it looks like before he gives approval. Mr. Murphy said this is beyond your control. Commissioner Girard asked Mr. Brochu do we have any authority to do this? Mr. Brochu said you have the authority to review the entire project. Commissioner Ventrone asked is it within my purview to want to know what the structure looks like? Mr. Brochu said yes.

Commissioner Bennett asked Mr. Brochu a question about the required findings under C of the State Law, it says "all low to moderate income housing is to be compatible in scale and architecture to the surrounding area." Mr. Brochu said it is confusing because a standard

application is different than this because the affordable house is already existing. She said we should not have one house look different than the other and the affordable housing unit is going to look different. She would like to see our first foray into affordable housing to look nice and not see a low rise and high rise.

Town Planner Lisa Bryer said based on the conversations at the last meeting she discussed the issue of utilizing the housing trust fund to fund the shingling of the house as part of the renovations. She discussed this with Solicitor Peter Ruggiero, Finance Director Tina Collins and Bruce Keiser and they felt that yes we can use this for cedar shingles and according to the finance director and the town administrator it would be an eligible cost for the housing trust fund.

Commissioner Holland said before we spend a lot more time he wants to know what is the consensus of the board on this issue, he thinks it is inappropriate **and** to say it is not in character because it already exists. The siding or structure of the house he is proposing shouldn't be in question. **If** he was not doing this application he could do what he wants without going before any board. **He** is in good conscience doing this and we are **knit** picking. This lot could have a duplex by law or be subdivided with a public road; we have to keep these things in mind.

Commissioner Nickol said if this is affordable for a family of 4 that makes 45000 a year what is the reality of them being able to afford replacing the cedar shingles after 20 years?

Commissioner Ventrone wants to know what we are approving before he approves it. By a show of hands how many Commissioners want the affordable unit to have cedar siding? 1 person-Commissioner Bennett, 5 commissioners voted they did not want to require it. Commissioner Ventrone did not vote.

Town Planner Lisa Bryer spoke with the solicitors today. They said that the homes themselves are integral to the application and you may ask to see these things but be very careful if you are going to approve or deny it based on a fact such as cedar shingles. It must be consistent. Commissioner Ventrone said this is not new to us we always see elevations. Attorney Murphy said no you do not, for instance Manning you did not see the elevations.

Commissioner Holland said with the Manning subdivision we did not see elevations and at the last meeting ~~he~~ **Mr. Lawless** handed out proposed elevations and he has again said it would be consistent with what was handed out. A general example is fine with ~~him~~ **Commissioner Holland**. Commissioner Swistak agrees with Holland this should not be done different than anything else. What about a straw vote among the commissioners that this application is complete the way it stands now. The new structure will have cedar shingles and be within the architecture and similar to the example he showed at the previous meeting. A motion was made by Commissioner Girard that the two units are compatible with each other **as currently proposed**; Commissioner Brown seconded. By a show of hands 6 are in favor Commissioner Bennett opposed.

Commissioner Nickol discussed the development budget proposed by CCHC; she would like the approval to be subject to approved local gap financing. Christian Belden handed out a revised source and use table and they do match and yes they are using town funds. Christian Belden reminded everyone that you can apply every year and ask for an increase every year for funding.

A discussion ensued about CDBG funding and Christian noted that housing applications are outside of that cap that you can ask for.

Attorney Murphy and Mr. Lawless thanked the Commission.

Commissioner Girard said we will take public comment.

Marcus Cochran 9 North Main Rd. as a municipal employee in Newport he wants to add that the primary concern in Section 9 in the Comprehensive Plan says something different, he was told that the state has now overruled this is not a density bonus. There are several lots within this area by allowing 1 to be subdivided by increasing the density of this one lot you are encouraging this to happen more. As a firefighter this is not a safe lot for firefighting. Planner Bryer said she will confirm this with the Fire Department.

Mr. Betzer -15 North Rd. – what he is saying about the standing water is not true.

Maryann Oldewurtle – Mr. Lawless is open to providing screening, a barrier or fence. Can we rely on you (Planning Commission) to make that a condition? When she came before Zoning she had conditions that she had to meet such as shingles and she thinks we should make him do the same thing. She is asking the board to be responsible and see the plans before making a decision and she got a quote for cedar shingles for the existing house for \$7100.

Stacy Lyon - Marine Ave said in today's economic climate it is not absolute that he will do what he is proposing and he could go ahead and flip the property. She was told that there is nothing preventing him from selling the market rate house but the smaller has to be affordable housing.

Mr. Brochu said what is before you is not just a subdivision what you are approving or disapproving is the complete project. The subdivision and 2 residential units 1 affordable and any conditions imposed stay with the lots. He can sell it but it has to be what was approved tonight. Unless we make a finding of fact that states different said Mr. Murphy.

Commissioner Swistak wants to make a recommendation on this project to approve with conditions, which includes fairly comprehensive Findings of Fact and identify someone on the commission to draft this and review for next meeting.

Mrs. Ellen Betzer – 15 North Rd. you as a panel should take into consideration the abutters. You are negating everything we look at and you're not thinking of our feelings. I don't want 7 people deciding my life. You're not taking into account our needs and I know very well low income. It's not like we are against CCHC or low income housing. I used to be on the board of CCHC. For you to just flip it off we are tax payers and she has a problem with what the Commission is thinking.

Commissioner Swistak will draft a motion for the next meeting and they will have it ahead of time so they will proceed in the right way and 2 motions will be prepared so be prepared to vote on it that night and made any changes.

Deliberations will be during the open public hearing. Commissioner Swistak said he agrees with Mr. Brochu's recommendation of keeping it open.

Mr. Betzer – said just because the state says you can do this it does not mean its OK.

The following is a list of conditions for the motion.

Certificate of Completion - Yes it's complete.

Review of application – notification made properly yes

Proper Public notice yes

Abutter notification yes certified and in the Jamestown Press

Holding public hearing within 90 days and decision by Feb 2, 2009 yes

Required Findings should be listed from State Law

The development is within local needs and refer to affordable housing plan. Findings should say whether it is consistent or not

No significant environmental negative impacts to current and future residents

Is the affordable house going to have public water? Yes

Specific for proposal for surface water runoff be specific that it will not increase

Physical Access to a public street - Pemberton

The chair said in order for this to pass it must be the majority of the commission not just those attending. So it has to be 4 for approval or denial. Please let office know if you cannot be in attendance.

Commissioner Swistak - 2nd part of approval will be conditions already agreed to for instance crushed stone driveway, slab on grade no basement, setbacks in accordance with proposed drawings. The fire marshal shall determine access to the rear property. Commissioner Nickol wants a condition for the funding have a commitment letter from CCHC and town of Jamestown they have already applied for a reauthorization for the funds.

Are we precluded from putting shingles on the affordable house? The Planner responded that CCHC funds would not allow it but the town could do it with their funds. The town said if Planning Commission decided yes then it has already been reported that we have the ability to pay for it but if the Planning Commission does not make it a condition of approval then it is not required then it is not necessary.

Attorney Brochu said his legal office wants to look at the motion first.

Commissioner Swistak made a motion that Commissioner Girard seconded to continue the public hearing until the meeting on December 17th, 2008. So unanimously voted.

VI. Old Business

1. Jamestown Zoning Ordinance Amendments – Continued Discussion

This item was continued.

A motion to adjourn was made by Commissioner Swistak and seconded by Commissioner Ventrone at 10:00p.m. So unanimously voted.

Attest:



Cinthia Reppe
Planning Assistant

This meeting was digitally recorded