

Approved As Written 11-3-10  
PLANNING COMMISSION MINUTES  
October 20, 2010  
**7:30 PM**  
**Jamestown Town Hall**  
**93 Narragansett Ave.**

The meeting was called to order at 7:30 p.m. and the following members were present:

Dan Lilly	Susan Little
Richard Lynn	Duncan Pendlebury
Michael Smith	Michael Swistak

Not present:  
Rosemary Enright

Also present:  
Lisa Bryer, AICP – Town Planner  
Cynthia Reppe – Planning Assistant  
Wyatt Brochu – Town Solicitor  
John Murphy – Attorney  
Michael Darveau – Darveau Land Surveying, Inc.

**I. Approval of Minutes October 6, 2010**

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

**II. Correspondence**

1. FYI – Minutes TRC – Bank Newport – Commissioner Smith objects to the parking, turning radius. They changed entrance and exit to Union St. they looked at circulation and they narrowed it at Union. Received

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

**IV. Reports**

1. Town Planner's Report – Governor Caciari has named October as community planning month.
2. Chairpersons report
3. Town Committees
  - a. Harbor – CRMC approval for maintenance of Fort Getty boat ramp
  - b. Buildings and Facilities – met tonight they will continue to inventory and access the town buildings and facilities which was directed by the Town Council. They will be looking at golf course building first.
  - c. Affordable Housing Committee

- d. North Rd. Bike Path Committee
4. Sub Committees

Commissioner Pendlebury recused and left the table.

Attorney John Murphy informed the Planning Commission that funding was approved for the Swinburne project with a bridge loan to CCHC which will be repaid once the money is received from the state.

#### V. Old Business

1. Stephen Evangelista – Pre- Application - 4 lot Minor Subdivision – Plat 4, Lots 9 & 137 – East Shore Rd.

Mr. Murphy handed out two drawings one showing that it can be done in complete compliance with frontage on a public road. He said following the site visit they did some revisions. The plan they want to use will require a trip to the zoning board with private roads as opposed to a public road. The property owner has decided that the lots that do not have frontage on the waterfront will not have rights.

Mike Darveau, PLD said they labeled the proposed new driveway as gravel, reconfigured the northerly driveway to remove the big turnaround so there will not be a need for easements or ROW's. They put the wetlands on the plan and they had it flagged out by a biologist. There is a small portion of parcel 3 within 150 feet where the proposed septic system is planned but they have proved that it is not in the area.

John Murphy stated as of this moment the feedback from the town engineer says it meets the zoning regulations, whatever the town engineer decides the applicant will comply with what they want. If it results in a variance being needed they will go to zoning.

Stephen Evangelista had the fire dept visit his property to see if fire dept trucks can do their job and they can. Commissioner Lilly asked, should we not be looking at changing the regulations? They are not proposing that this be a public or private road but a driveway. They are making there best attempt to meet the regulations. Lisa Bryer, Town Planner said we will have this conversation when we look at the subdivision regulations. Lisa Bryer said we have to look at this on an individual basis.

Mr. Murphy would like to combine the preliminary and public hearing at the same time for the next meeting. Lisa Bryer said she has to look at this in more detail to see if that is ok it may have to be reassigned to major subdivision review. They want to combine the phases with the public hearing.

Town Solicitor Wyatt Brochu asked Mr. Murphy if they can subdivide and meet the standards? If the Planning Commission recommends it then they will go for a dimensional variance. The key is it has to be recognized by the planning commission as something better for the town.

Commissioner Swistak asked can you articulate the owners reasoning as to why the planning commission should approve plan B. The conventional plan creates a public road that serves no purpose it is just for the lots. It is frontage on a culdesac. It invites the public into a place that the public does not need to be, it is also a burden on the town. The point of view of the owners having private driveways goes with the style of house and preserves the summer colony type ambiance

that these houses are able to maintain. Mr. Darveau said the proposed public street will have 9400 sq. ft. of pavement that will need to go into a retention system that will become the towns responsibility along with plowing. The pre-app plan B is gravel driveways no maintenance by the town at all.

Commissioner Smith said in either plan there are 2 curb cuts. He is disappointed to hear that the easements were being negated. He wanted them to have access but permanent access and language to protect all the property owners. Commissioner Lilly wants to go on record to say that if his questioning regarding moorings led to that in any way that was not his intent.

Commissioner Swistak asked "If we accept plan b and go forward will that open a Pandoras box?" Access to utilities are on the Pendlebury's lot. The underground utilities and transformers sit on the Evangelista's lot. It is the applicants intention that when the house is demolished it will come off of the driveway so it will not impact Mr. & Mrs. Pendlebury's property.

Ms. Bryer thinks it would be helpful to see the buildings setback lines, parcel 4 is limited in size because of CRMC setbacks. She does not want the board to take this lightly, if the conventional plan is approved they can say it is to be removed. It works on paper but she is troubled by the lot configurations, and wants the planning commission to understand they are responsible for this. We have people that call and complain all the time about accessing their property. The height and roadbed needs to be maintained. There is a no build zone on lot 2 which was brought up by the abutter, Mr. Darveau said yes it is confirmed by the diagonal line which will protect the view.

Commissioner Swistak brought up private driveways vs private roads when we get past approval point and into construction how do they differ? Lisa Bryer said a formal agreement for the driveway and maintenance agreements for the road. It is handled in deed restrictions and monuments and requirements for cutting the trees and shrubs back. He would like to see a monument as part of the easement, we still have the obligation of public safety, these things should be documented in the deed and recorded in land evidence, lets include a maintenance agreement for the driveway. It could be one of the conditions of approval.

Mr. Murphy will prepare a document and to be reviewed by attorneys and if the planning commission wants it marked they can do that. A private road puts the responsibility to all the property owners that are using it. Mr. Murphy said people fight over driveways all the time and the agreements that they have drafted are good enforceable agreements. They can be maintained. A shared driveway agreement can be just as strong and enforced as a private road said Commissioner Swistak.

Mr. Brochu said because the board has voiced concern about curb cuts parcel 1 and 3 cannot do curb cuts as part of plan which could be part of the approval.

They are asking for a major subdivision with approval of waivers and to combine master and preliminary at the earliest possible date and public hearing that same night and following they will go to zoning board. They do not have to act on that right now it will be part of the submission.

We can discuss and possibly approve the transfer from minor to major for the purpose of granting waiver, and which standard they need to meet.

Commissioner Lynn asked, "if we approve this as a private road instead of the driveway and eventually there is an issue does that leave the town liable?" It would be the responsibility of the

owners. Technically when subdivisions are approved the applicant may drive the driveway as they please.

There will be documents that say the driveway will be built to these dimensions etc., and it can be part of the conditions of approval. They want a good solid document that says what to do.

Mr. Murphy will develop a contractual obligation to share in cost of maintenance and property rights and utilities, a document that the property owners can enforce. He will draft for them to see at the next meeting.

Duncan Pendlebury – East Shore Rd. stated for informational purposes the driveway on 302 has an agreement which both parties share the maintenance, plowing, grading etc. and it has never been a problem for the actual driveway. They rent for weddings and she is good about no disturbing the neighbors. It does work.

A motion was made by Commissioner Swistak that was seconded by Commissioner Lilly that the application for the Evangelista 4 lot Minor subdivision Plat 9 Lots 9 & 137 – East Shore Rd. to change this application to a 4 lot Major subdivision. So unanimously voted.

A motion was made by Commissioner Swistak and seconded by Commissioner Lilly to grant the request of the applicant Mr. Evangelista for the 4 lot Major subdivision Plat 9, Lots 9 & 137 to combine master and preliminary approval and to include the public hearing at next earliest date on the planning commission calendar after submission and staff review is completed. So unanimously voted.

Commissioner Pendlebury returns to the table.

## **VI. New Business**

A motion was made by Commissioner Pendlebury and seconded by Commissioner Lilly to adjourn the meeting at 8:55 p.m. So unanimously voted.

Attest:



Cinthia L Reppe

This meeting was digitally recorded