

Approved As Written
PLANNING COMMISSION MINUTES
March 20, 2013
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:

Michael Swistak – Chair
Rosemary Enright – Secretary
Michael Jacquard
Michael Smith
Duncan Pendlebury – Vice Chair
Mick Cochran
Richard Lynn – arrived at 7:32 p.m.

Also present:

Lisa Bryer, AICP – Town Planner
Cinthia Reppe – Planning Assistant
John Murphy – Attorney
William Burgin – Burgin Lambert Architects
Ben Brayton – Simpatico Jamestown
Amy Barclay – Simpatico Jamestown
Maureen Coleman – Conservation Commission
Kate Smith – Conservation Commission
John Somyk - Applicant
John Lawless – Whale Rock Engineering
Shahin Barzin – Architect

I. Approval of Minutes March 6, 2013

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

II. Correspondence

1. FYI – Administrative Subdivision – Neal, Swanson. Received
Town Planner Lisa Bryer gave an update on this administrative subdivision to the commission.

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

IV. Reports

1. Town Planner's Report – second CDBG hearing tonight going to tc on April 1 and then to pc on April 3rd.
2. Chairpersons report
3. Town Committees
 - a. Harbor
 - b. Buildings and Facilities

- c. Affordable Housing Committee
 - d. North Rd. Bike Path Committee
4. Sub Committees

V. Old Business

1. **Simpatico Jamestown Restaurant – Development Plan Review – 13 Narragansett Ave. - Jamestown Village Special Development District –Amendment to Approved Development Plan**

Commissioner Swistak recused and left the table.

Town Planner Lisa Bryer gave a quick update regarding the paperwork that has been distributed tonight and via e-mail today to the Planning Commission and the applicant.

Attorney John Murphy gave a brief outline as to why they are here again. The Planning Commission approved this plan in December of 2012. The Fire Marshall and Building Official determined that under the new fire code laws the four tents along Narragansett Avenue cannot be used so Mr. Burgin began working with Mr. Brayton on a series of choices to replace the tents with a permanent structure. Mr. Brayton would like to still have the garden appearance which is open and not closed in. One of the things taken into high priority is to protect the Copper Beech tree that is there.

Mr. Bill Burgin made a presentation to the Planning Commission. He explained the pergola design proposed. The goal was trying to create a garden structure that is attractive light and open and still protect the diners. There will be plantings woven through as shown on the drawing. He briefly described the roof material which will be a membrane roof between the roof of the pergola and the cross beams. Mr. Brayton put a mock up of the railing detail today on the new porch. Mr. Burgin also found some historical pictures of Jamestown depicting the railings used 100+ years ago. The Planning Commissioners have a drawing of the pergola detail showing dimensions and materials.

Commissioner Smith asked what was previously approved for seating? 120 he was answered. He questioned the Phase 2 design asking for 190 seats. It was confirmed that the only thing we are looking at today is the pergola stated Commissioner Pendlebury?

Commissioner Enright asked about the wires on the fencing? The applicant responded that they will be included; this was just a mock up using wood. Commissioner Smith said he thinks Simpatico does a much better job of parking than any other restaurant in Jamestown with regards to providing it. He personally thinks most of the spaces are full. He is in favor of approving Phase 1 but not Phase 2(190 seats). The applicant has to prove to the zoning board where the parking will be for 190 seats Commissioner Smith said. He is in favor of approving Phase 1. Which is the only thing they are talking about tonight in Phase 1 is the Pergola.

Commissioner Jacquard asked what is a modesty panel? The applicant asked where this came from in the Findings of Fact and Conditions of Approval. Commissioner Pendlebury said this came from him during the TRC meetings. Pendlebury thinks the railing is not consistent with the village. Railing and context of railing should be more of a barrier either with vegetation, wood or

other. This will ensure the comfort and privacy of both restaurant patrons and pedestrians. It is our responsibility to worry about the streetscape and the experience of the pedestrian.

Commissioner Smith likes to leave the applicants a bit of leeway. He is not in favor of a modesty panel.

Commissioner Enright does not like the concept of metal wires.

Commissioner Cochran asked about the pergola that was presented at the first TRC meeting where the first design was rejected and they were asked them to reconsider since he felt it did not look right. This has been primarily a garden restaurant. What color will the trim be? The applicant responded that it will be Charcoal grey possibly and they are paying an interior designer to work out color schemes that allows for bringing in a true garden effect.

Commissioner Lynn agrees somewhat with Pendlebury, he doesn't feel it is offensive though. He wants to make sure the structure is not imposing. He feels the porch coming up to the street is like most of the businesses on Narragansett Ave. although this is a massive appearing structure as you walk up the street. Keeping it open is important to him.

Commissioner Enright asked about whether the stone wall is going to be rebuilt to the height of the bottom of the porch? No it will not be raised. There will be different openings but same type of wall.

Commissioner Pendlebury holds to the responsibility of the Planning Commission with our village zoning requirement is to provide a pedestrian friendly environment. Creating an environment of putting people up above the sidewalk and a flat roof is not what the village character is all about. Pendlebury still feels the metal railing is not an appropriate design. The applicant has the responsibility to his customers as well as the pedestrians.

A discussion ensued regarding the screening of the pergola. Commissioner Smith said it was agreed by the commission tonight not to require a modesty panel. Pendlebury said we can continue to state that a screen or barrier would be more appropriate and recommend it. The applicant can always reject the recommendation. Commissioner Pendlebury said the applicant, at the last TRC meeting, represented to the TRC that the railing would be screened with vegetation. The TRC is not happy with the railing design. The original review that was given for DPR the Planning Commission recommended the applicant look at something different. Attorney Murphy indicated that the applicant did reconsider but they are going forward with the original design which is a largely wood rail. They communicated with the town planner and then drew their permits.

A motion was made by Commissioner Enright and seconded by Commissioner Cochran to approve the application of Benjamin Brayton, The application of Benjamin Brayton, JTN, LLC and ESJ Inc., DBA Simpatico Jamestown, 13 Narragansett Avenue, Assessors 9 Plat Lot 603 was reviewed by the Planning Commission on March 20, 2013 and the Planning Commission hereby amends the Development Plan approval originally approved on December 5, 2012 based on the following facts of finding and subject to the following conditions of approval:

The RI Fire Code changed on January 1, 2013, affecting the legal use of the 4 tents along the frontage of the subject property. The applicant is desirous of replacing those 4 tents with a permanent wood structure known as pergola. The pergola is the only item in Phase I, as shown on the plans, that is being considered in this approval by the Jamestown Planning Commission unless otherwise noted.

Findings of Fact:

1. The application submitted plans under the standards of Zoning Article 11 – Section 82-1101K – Applicability, and 82-1103 – Site and Building Plans.
2. The application was reviewed by the Technical Review Committee on February 7 and March 14 as required by 82-1101K.
3. The applicant has provided the following information for the current application:
 - A front building/street-side perspective
 - Plan showing proposed parking plan, existing floor plan and proposed floor plan Phase 1
 - Plan showing proposed parking plan, Proposed Floor Plan – Phase 2
 - Plan showing existing East, North, West and South elevations
 - Proposed elevations, East North, West and South
 - Pergola detail showing materials

The drawings were prepared by William Burgin of Burgin Lambert Architects, who presented as the applicant's Architect during the meetings.

4. The property is located in the Commercial Downtown (CD) District. Restaurant and office use is permitted in the CD district.
5. Section 82-1107 B.3. notes that one principal building at the frontage, and one outbuilding to the rear of the principal building, may be built on each lot as shown in Table 11-1. No outbuildings or ancillary structures may be erected without a primary structure. The pergola is considered an outbuilding and is located at the frontage.
6. Section 82-1108 A.9. states that No flat-roofed buildings may be constructed unless they meet the definition of a green roof. All roofs should have a minimum pitch of six inches on 12 inches (22.5 degrees).
7. The applicant has indicated that phase 1 will accommodate 120 seats in the restaurant where phase 2 will seek greater seating capacity. This restaurant is permitted for 120 seats by the Zoning Board. The 120 seats were conditioned on several shared parking agreements that were approved by Zoning (True Value, Eanarrino bldg, TCC), several of which are no longer valid. Since that time we now allow on street spaces to be counted and several of the shared agreements are no longer in affect. The 11 spots at Extra Mart have not been permitted by Zoning. Any change to the current 120 seats will require re-approval of the Zoning Board since they approve all shared parking agreements. The 11 spaces at xtra mart will require Zoning Board approval prior to utilizing for extra seats at the

restaurant. The applicant's original sentiment at the December meeting of using those spaces for staff is still available in the interim based on their shared parking agreement in place.

8. A new sign is shown on the plans subsequent to the TRC meeting above the second floor private porch. No dimensions or materials have been provided.
9. The applicant has also met the requirements of providing a dedicated loading/ unloading space as required in Article 12, Section 1206.
10. There are no issues or concerns related to drainage.
11. The applicant may require additional Liquor or Victualling Licenses.

Conditions of Approval

The conditions below are in addition to those approved by the Planning Commission on December 5, 2012.

1. Any change in seating capacity will require approval of the Zoning Board of Approval unless it is done through increased on-site parking spaces.
2. The design and location of new signage will be approved by staff prior to installation to insure compliance with Article 13 of the Zoning Ordinance.
3. If the stone wall is damaged by the installation of the pergola structure or fencing, the replaced stone wall shall be similar in character and height to the existing stone wall.
4. Any damage done to the public right-of-way / sidewalk during construction will be repaired by the applicant to Town standards.
5. All new vegetation adjacent to the sidewalk must be maintained so as not to encroach on the sidewalk/right of way.
6. The applicant will obtain all necessary approvals from the Jamestown Fire Department during the permitting/construction phases.
7. The flat roof of the pergola shall be constructed in a manner as to not shed stormwater onto the public sidewalk.
8. Final Finish of Column Colors will be reviewed by staff.
9. Final Lighting will be reviewed by staff.

Recommendation

1. Railings at the top of the stone wall and restaurant deck should be screened from the public sidewalk with vegetation to the best of the applicant's ability.

So unanimously voted.

Commissioner Swistak comes back to table

2. John Somyk – Plat 5, Lot 175 & 194 – Riptide St. - 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' freshwater wetland setback – Recommendation to the Zoning Board – continued

This application was continued from a prior meeting January 2nd, 2013 at the applicants request because there were only 4 commissioners present and they seemed split on their view of whether to approve or deny the application. At that meeting Mr. Somyk was accompanied by Mike Darveau, Land Surveyor. The 4 commissioners that were present were prepared to make a recommendation. Wyatt Brochu's advice was there were a few things for the application that he thought should be included since they will need that information going forward to Zoning anyway. And the Planning Commissions recommendation should be from the same information and testimony that the Zoning Board will receive. One such items was a plan from a landscape architect.

Mr. Somyk - 401 Seaside Dr. owner of the property on Riptide St. said the plan is slightly different than last time. He hired George Gifford to do the landscape design; he is a landscape Architect. He added a couple rows of plantings including a spruce tree and some other plants to protect the wetlands. There are 2 sheds that will come down. George Gifford says there will be no impact to the wetlands. Mr. Somyk appreciates what the conservation commission is doing and he is concerned too but there is already two sheds and the property is cleared. He will be adding vegetation.

There are preliminary findings of fact and some will need to be updated since he has addressed some of the things. Has anything else changed on the site plan beside the additional plants. No Mr. Somyk stated.

Maureen Coleman – chair of Conservation Commission Jamestown – they have extensive concerns over this application. She gave a little background into this particular lot and area. In 06 the town council voted to send a letter to DEM objecting to this variance. She has a copy of the minutes from 2006 but not the original letter. The town actually sued the state to not put anything in that area during the cross island expressway construction. This particular wetland is why we have this ordinance. Groundwater and wetlands is the conservation commission's main concern. The Jamestown shores have specific issues related to groundwater and wetlands. This request is so incredibly extreme. They have re-reviewed the plans and they know the applicant has tried to do the best but the house is in the wetland by state definition.

Commissioner Pendlebury said as he understands the states regulations the perimeter of the wetland is considered to be wetland too. Most of the high groundwater applications and variances have been minor but this is extreme.

Commissioner Swistak asked “how does the state allow a septic within 50 feet of a wetland and our town’s is 150 feet?” Ms. Coleman said lobbying from builders around the state is how the states standards are not as strict as ours. South Kingstown and Charlestown both use 150 feet setback in their ordinances too.

Mr. Somyk asked if he can address the commission. He said if he could move the house he would; he is willing to make the house smaller, he is willing to do anything to work with the town in order to be able to build his house. He has technical data that says no impact, and also approvals from the state. He is going to zoning anyway. He thinks what he is proposing will be better than what is there now. He can put a garage that size their now according to Fred Brown. He is trying to work with planning to go forward.

When this goes forward to zoning it will be noted as to how the planning commissioners voted.

Commissioner Swistak said his opinion has not changed. He is not recommending approval. This is a difficult situation, he respects what Mr. Somyk is trying to do. He feels it is his responsibility and he has to enforce the 150 ft. at this time. He asked for the opinions of each of the Commissioners.

Jacquard – agrees with Swistak - Opposed

Enright – Opposed; too great of a variance in this area

Lynn – thinks the applicant has tried his hardest and is well meaning he thinks there are limits that just can’t be passed. Also the strong testimony from Conservation Commission. Opposed

Cochran – he was on the fence and inclined to approve since the last time he has done his homework with the comp plan he can’t imagine being able to put a septic in. Opposed

Pendlebury – Opposed

Smith – these wetlands start in West Reach and flow past Capstan then into the old basin from 1938. There are many houses, that were build a long time ago, much closer to wetlands than Somyks property. He is not a fly by night developer. He thinks he has no chance getting this passed and thinks this is an injustice to the applicant. But the way our ordinance is written he does not think it is an approvable application and that is not a just situation.

We are going to make a recommendation to not approve we need to add to findings of fact and it will be reviewed by the solicitor before it comes back to the PC for the next meeting hopefully by the first one in April. A motion to continue until April 3, 2013 was made by Commissioner Smith seconded by Commissioner Enright. So unanimously voted.

VI. New Business

1. Martha Harris – 209 Beacon Ave. Plat 16 Lot 214 – Zoning Ordinance Section 314 High Groundwater Table and Impervious Overlay District Sub-district A review - Recommendation to the Zoning Board

John Lawless a Registered Engineer in the state of Rhode Island for about 20 years has presented many 314’s to this board. He is here with Martha Harris owner of the property and Shahin Barzin, Architect.

A motion to accept Mr. Lawless as an expert witness was made by Commissioner Pendlebury and seconded by Commissioner Smith. So unanimously voted.

Shahin Barzin, architect licensed in RI and NY, practicing since 1981. A motion was made by Commissioner Lynn and seconded by Commissioner Jacquard to accept Mr. Barzin as an expert witness. So unanimously voted.

Mr. Lawless gave a presentation to the Planning Commission.

Martha Harris the owner and applicant of 209 Beacon Ave. has lived there since the 1980's. He gave a brief description of the property. The proposed addition is 884 sq ft. and the overall change in square feet is only 766 square feet since the existing west wing will be removed. The existing septic will be abandoned. There is currently a crawl space, no basement.

Commissioner Swistak asked what a level spreader is; it is a device that prevents channelized flow. They want to expand for more room, very simple structure so cost will be minimized. The foundation will be built to allow flow between the footings.

A portion of the addition is 2 story and the main house is 1 story. The existing foundation is weak so that is why the addition is a structure in itself.

A motion was made by Commissioner Smith and seconded by Commissioner Pendlebury to recommend to the Jamestown Zoning Board, approval of the application Martha Harris – 209 Beacon Avenue, Plat 16 Lot 214 – Zoning Ordinance Section 314 High Groundwater Table and Impervious Overlay District Sub-district A review in accordance with the plans entitled **Existing Conditions Site Plan and Proposed Conditions Site Plan for Martha Harris, Property located at #209 Beacon Avenue, Jamestown, RI, dated 3/7/13 and Harris/Lee Residence House Design Plans dated 3/11/13**. The recommendation for approval is based on the following findings of fact and subject to the following conditions of approval:

Findings of Fact Section 314

The applicant is proposing to construct an 884 square foot a portion of which is a 2 story addition to an existing house.

1. The lot is 16,992 square feet with an average slope of 7 ½ % to the west.
2. The application does not increase the bedroom count of 2 for the dwelling, which is consistent with the 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.
3. There are no wetlands on or within the vicinity of the property.
4. Based on soil evaluation reports, the subject lot is in sub-district A.
5. The applicant has met the standards of 82-314 according to a Memo to Lisa Bryer and Fred Brown, provided by Michael Gray, PE and Justin Jobin, Environmental Scientist dated Thursday, March 14, 2013.

6. The proposed impervious cover is 12.07, which is under the permitted 13%.
7. The design of the OTWS was prepared by John Lawless, WhaleRock Engineering, dtd revised 3/11/07. A copy of the dates allowing tolling, or State permitted extension, has been provided. The proposed Advantex AX-20 onsite wastewater treatment system and bottomless sand filter leach field provides advanced treatment, and meets the requirements of the ordinance. The existing conventional system will be abandoned per RIDEM regulations.
8. There is no basement being proposed and the foundation is designed to have water flow through it.
9. In order to mitigate increased runoff from the proposed improvements, the applicant has proposed the use of a crushed stone stormwater detention area adjacent to the existing patio area downhill of the proposed addition. The proposed mitigation meets the criteria of the ordinance.
10. The existing well will be abandoned and a new well is proposed at the northeast corner of the property.
11. John Lawless PE presented the application on behalf of the applicant, and was accepted as an expert witness with regards to drainage and OTWS design. Shahin Barzin, architect was accepted as an expert witness.
12. RIDEM requires maintenance of all storm water mitigation systems by the owner, which is critical to continued mitigation of runoff.
13. The applicant has provided an 8 ½” x 11” written Operations and Maintenance (O &M) recommendations for pervious driveway, stormwater mitigation and OWTS.
14. The current dwelling does not meet the 30 foot front setback. The existing setback is 9.5 feet and the stairs are 8.2 feet from the front lot line. The stairs will be removed.
15. A new swale will be created around the OWTS

Conditions of Approval

1. The existing driveway, shall remain pervious. Any change in that will require re-approval by the Zoning Board of Review
2. The O&M sheets as referenced in #13 above shall be recorded with the Zoning Approval.

So unanimously voted.

A motion to adjourn the meeting at 10:15 p.m. was made by Commissioner Enright and second by Commissioner Smith. So unanimously voted.

Attest:

Cynthia L Reppe
Cynthia L Reppe
Planning Assistant

This meeting was digitally recorded