

Approved As Written
PLANNING COMMISSION MINUTES
December 4, 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	Duncan Pendlebury – Vice Chair
Rosemary Enright – Secretary	Mick Cochran
Michael Jacquard	Michael Smith

Not present:

Richard Lynn

Also present:

Lisa Bryer, AICP – Town Planner
Cinthia Reppe – Planning Assistant
Wyatt Brochu – Town Solicitor
John Somyk, applicant, arrived at 8pm

I. Approval of Minutes November 20, 2013

A motion was made by Commissioner Pendlebury and seconded by Commissioner Cochran to accept the minutes. Due to a question from Sav Rebecchi regarding a statement he made the commission is going to postpone the approval of the minutes until the next meeting so the planning assistant can check the recording.

II. Correspondence

1. Letter from James J. Burgess Re: Historic Zoning of Lower Shoreby Hill. Received

III. Citizen's Non Agenda Item –

Sav Rebecchi – Sail St. was surprised to see that the appeals provision was not included in the moratorium as adopted by the Town Council. He thought if someone decided to eliminate it then it would come back to the Planning Commission. Lisa Bryer said that is a question to ask Town Solicitor Peter Rugeiro and the Town Council. Wyatt Brochu suggested that what Sav is asking for or talking about is not within the Planning Commission purview, it needs to be directed to the town clerk.

IV. Reports

1. Town Planner's Report
2. Chairpersons report – at last meeting of the Town Council they approved a moratorium for demolition and construction for building in the lower Shoreby Hill neighborhood. They

recognized that it might be a surprise for other people outside Shoreby Hill and so they limited it to that area. Emergency repairs can be done. June 2nd is the expiration date.

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) **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 Zoning Board – continued**

This application goes back to June of 2013. At Mr. Somyk’s request he asked for an extension to look into various different possibilities. There has not been any additional information of plans submitted. Based on that the Planning Commission has the original proposal to make a recommendation on. Mr. Somyk said he was not going to attend the meeting.

Maureen Coleman, representing the Conservation Commission, has nothing more to add. There are no new concerns.

A motion was made by Commissioner Cochran and seconded by Commissioner Smith with a notation to amend the numbering and the date of the memo “to recommend to the Jamestown Zoning Board, denial of the application of John Somyk – Assessor’s Plat 5 Lot 175 and 194; being reviewed under Zoning Ordinance Section 308 – Setback to Freshwater Wetlands and Section 314 - High Groundwater Table and Impervious Overlay District Sub-district A review in accordance with the plans entitled **Proposed Site Plan for John Somyk, Property located at Assessor’s Plat 5 Lot 175 and 194, Riptide Street, Jamestown, RI, dated 4/16/12 and Planting Plan by the Gifford Design Group, Inc. dated March 2013**. The recommendation for denial is based on the following findings of fact:

Findings of Fact Section 314 and 308

The applicant is proposing to construct a two bedroom 24’ x 40’ dwelling on two lots, Lots 175 and 194 totaling 21, 600 square feet.

1. Applicant plans to combine Lots 175 & 194 subsequent to and as part of the Zoning Board approval.
2. The lots in question have not been publicly accepted nor have maintained access and therefore no existing street frontage, and the applicant will require a variance to allow access to the property via a right-of-way easement through Lot 177.
3. The existing 12 x 16 structure currently existing on lot 175 will be demolished. There is no existing foundation.
4. Applicant has obtained 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.
5. The proposed dwelling is 26’ from the nearest wetland edge.

6. The relief necessary conflicts with our responsibility to prevent further impacts where intense development in combination with limited land development suitability have resulted in localized flooding, incidents of groundwater contamination, low well yields and salt water intrusion.
7. The relief necessary conflicts with our responsibility to protect the island's vulnerable and limited water supplies by maintaining maximum groundwater recharge of rainfall and treated wastewater to replenish drinking water supplies and avoid salt-water intrusion.

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Due to public health implications and a limited water supply, resources such as ground water recharge areas, including wetlands and public drinking water supplies must be given the highest priority for protection. Ground water recharge areas include wetlands throughout the Jamestown Shores neighborhoods and the north end of the Island.

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Policy #5: *Immediately act to manage, protect and restore groundwater resources in dense rural areas.*

Page 262 – Action Plan

Review for amendment Section 308 of the Jamestown Zoning Ordinance to protect development from impacting groundwater resources and other natural resources.

8. The relief necessary conflicts with our responsibility to ensure environmental compatibility and safeguards to protect the natural environment (82-600I).

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In addition to farmland, other areas of Jamestown need to be protected to safeguard the Island's natural environment and finite resources. Areas worthy of preservation and protection from development include: the public drinking water supply watershed; wetlands, both coastal and freshwater areas; scenic views; historic resources; unique and rare habitats; large acres of habitats; linkages connecting significant open spaces; properties that will help to protect the Jamestown Shores water quantity and quality, and any properties whose preservation and protection will protect the water resources of Jamestown.

9. The relief necessary conflicts with our responsibility to strictly enforce the 150 ft setback of ISDS (OWTS) from wetlands per the Jamestown Comprehensive Plan – Natural Resources/Water Resources.

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A major concern in Jamestown is the proper placement of ISDS. Section 308 of the Zoning Ordinance prohibits the construction or location of sewage disposal beds, seepage pits, cesspools or disposal trenches or other facilities designed to leach liquid wastes into soil within 150 feet of a bog, floodplain, pond, marsh and swamp as defined in the ordinance. Because of the Town's recognition of the importance of wetland quality protection, the requirements of this section are more restrictive than the State's requirements.

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Strictly enforce the 150 foot setback of ISDS from wetlands.

10. The relief requested contradicts the efforts by the Town of Jamestown to protect this fragile wetland/ watershed area by limiting development and preventing overdevelopment – notable in this effort is the purchase of a significant amount of acreage and permanently protect it from any development.

Jamestown Comprehensive Plan

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The primary problem with the water quantity in Jamestown is in areas of high density. Density in the Jamestown Shores area is between 2 to 4 homes per acre. Development of this density would utilize between 400 to 800 gallons of water per day per acre. This usage is more than the total available groundwater supply and does not include a buffer. Development density of this magnitude will result in overdrafts to the groundwater supply, especially during droughts or times of heavy seasonal water usage.

In areas of high-density development, there is a serious concern for the groundwater supply. The Town attempted to control density in the Jamestown Shores area with the adoption of a lot merger provision (1967) in addition to rezoning to R-40, which require a minimum lot size of 40,000 square feet. Even still, there are many substandard lots with dwellings and many grandfathered substandard lots eligible for residential development.

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These findings demonstrate that the high house density has adversely affected groundwater quality in Jamestown Shores area.

11. The applicants OWTS permit from RI DEM indicates the leach field is approximately 51' from a freshwater wetland edge at the nearest point. This location requires a variance of 99' (66%) based on the 150' wetland setback requirement of the Zoning Ordinance 82- 308.
12. Based on the proposed location of the dwelling and proximity to a wetland edge, the applicant is requesting a side setback of 10' on the eastern side of the property. The Zoning Ordinance requires 20'.
13. The site of the proposed project is in an area of high density development, the Town is concerned with protecting water quality and quantity, as documented by the Jamestown Comprehensive Plan.
14. Based on soil evaluation reports, the subject lot is in sub-district A.
15. The applicant's representative Mike Darveau has submitted expert testimony before the Planning Commission on 12/19/12 as an expert witness with regards to Land Surveying and OWTS Design and evidence that the proposed project meets the design requirements of Zoning Ordinance 82-314 High Ground Water Table and Impervious Overlay District as documented in a report prepared by Darveau Land Surveying Inc. dtd 11/8/12.
16. The Jamestown Conservation Commission has reviewed the application and recommended against approval of the application as documented in their memorandum to the Planning Commission dtd 4/16/12. Specifically the Commission concluded that the proposed development represents an unacceptable addition to the cumulative impact in the area of the subject site.
17. The applicant has obtained an Insignificant Alteration Permit from RI DEM for a proposed single family 2 bedroom dwelling, and associated driveway, ISDS, and deck. Reference Application 06-0039, dtd 8/18/06.
18. The applicant has provided a Narrative, by Gifford Design Group, Inc. dated February 2013, addressing the standards in Zoning Section 82-308 - Setback from Freshwater Wetlands.
19. Applicant has not provided information regarding impacts of run-off from proposed driveway from property to the wetlands.

20. Applicant indicated agreement with fertilizer prohibition requirement – but there are many questions as to how this would be enforced. Reference the Conservation Commission memo to P.C.
21. The applicant has submitted a landscaping plan, stamped by a Registered Landscape Architect, George Gifford of Gifford Design Group, LLC, as required in 82-308 4(b).
22. No evidence was presented documenting that the proposed size of the dwelling could not be reduced.
23. The Jamestown Conservation Commission provided correspondence dated March 12, 2013 noting their unanimous vote to recommend against approval of a variance request of this magnitude (attached).
24. Jamestown Public Works Director Michael Gray, PE and Jamestown Environmental Scientist Justin Jobin provided correspondence to Lisa Bryer, Town Planner dated March 14, 2013 regarding the Somyk application with respect to Zoning Section 82-308 – *Setback to Freshwater Wetlands*. (attached)
25. Jamestown Public Works Director Michael Gray, PE and Jamestown Environmental Scientist Justin Jobin provided correspondence to Lisa Bryer, Town Planner dated March 14, 2013 regarding the Somyk application with respect to Zoning Section 82-314 – High Groundwater and Impervious Layer Overlay District. (attached)
26. Maureen Coleman representing the Conservation Commission, on March 20, 2013, again testified that the proposed project should not be recommended for approval and is contrary to the intent of the Jamestown Comprehensive Plan to preserve the wetlands in that area.
27. Scott Rabideau of Natural Resource Services Inc., was hired as a consultant to the Town on this application. He appeared before the PC as an expert witness in the field of Wetland Biology, and provided a verbal description of his findings. Of particular concern is the design of the infiltration system at the driveway location. The water table should be verified since the separation is minimal and does not conform to the 2010 DEM/CRMC Stormwater Design & Installation Manual, which calls for 2 feet of separation from high groundwater - where the current design provides only for 6 inches. Further the infiltration system would be considered a 'volume' system and not a 'treatment system' which would be expected to have a lesser impact on wetlands and groundwater.
28. The opinion of the PC is that the hardship imposed by the nearby wetlands is a general condition of the area, and not specific to the lot, which would prevent the applicant from meeting Special Use Permit standard #1, under Sec 82-606.
29. The Town of Jamestown has made a significant effort to preserve the wetland complex associated with this lot for the purpose of groundwater protection for the entire Jamestown Shores region by acquiring 86+ lots and protecting them from development with conservation easements.
30. The Town of Jamestown adopted a greater standard than the State of Rhode Island for setback to freshwater wetlands for all OWTS leach fields for the purpose of protecting freshwater wetlands and their buffers and the significant purpose they serve in protecting groundwater quality.
31. In recommending adoption of the amendments to the Zoning Ordinance related to 308 and 314, the Planning Commission found that a high level of protection is needed to protect the Island's

highly vulnerable water supply and to restore contaminated wells. In addition they found that the purposes of the amendments to the high ground water table and impervious layer overlay district (Chapter 82 of the Jamestown Code of Ordinances, Sections 103, 308 and 314) are to:

- a. Ensure proper septic system operation and provide adequate pathogen treatment.
- b. Maintain groundwater nitrogen at safe concentrations for private wells,
- c. Control volume of stormwater runoff through on-site infiltration to recharge groundwater supplies, promote natural pollutant removal processes, and dilute wastewater effluent and other contaminants entering groundwater.
- d. Protect and restore wetland buffers to maintain their water quality function, filtering sediment, other pollutants in surface runoff, and promoting denitrification of shallow groundwater.
- e. Provide for use of advanced treatment systems where necessary and provide for their adequate maintenance.

32. Recent changes to FEMA Flood Maps/Zones may have an impact on the proposed project, and applicant should have an engineer obtain a new Flood Zone determination and verify that these changes do not affect the location or proposed elevation of the dwelling.

33. If the Zoning Board were to grant the requested variances, additional restrictions should be imposed to prevent a property owner from adding any other structures to the property, i.e. swimming pools, recreation equipment, patios, paved driveway, hardscape etc. This requirement should be a deed restriction to prevent any further impact and/or encroachment on the wetland.

Should the Zoning Board approve this application, against the recommendation of the Planning Commission we recommend, at a minimum, the following Conditions of Approval:

1. The proposed driveway, over property owned by others, shall be maintained as a pervious surface and not be paved
2. The applicant shall submit a landscaping plan, stamped by a Landscape Architect as required in 82-308 4(b) prior to the Zoning Board hearing.
3. The applicant shall provide information verifying that the OWTS location and design has not changed from the original approval to the proposed plan.
4. OTWS Maintenance Plan shall be submitted and recorded.
5. Storm water mitigation plan shall be recorded.
6. Access Easement must be prepared and recorded that addresses the potential of future termination of the easement over AP 5 Lot 177.

So unanimously voted: Michael Swistak – Aye
Rosemary Enright – Aye
Michael Jacquard - Aye

Duncan Pendlebury – Aye
Mick Cochran - Aye
Michael Smith - Aye

2) Buildings of Value – Discussion - continued

Commissioner Swistak wanted to check in with the Planning Commission to make sure they all agree as to what we have done so far: The moratorium is now in place, we have not designated

any buildings of value, we have not defined any criteria which would help us define what a building of value is, nor have we started to talk about any guidelines with regards to what level of protection a building of value may get. He asked the Planning Commission if they still felt it was a good idea to have a discussion on protection of historic buildings and properties. If anyone has a different point of view, let's talk about it before we move on. Commissioner Smith thinks that Buildings of Value and their designation are important to Jamestown. Commissioner Enright is in favor and also we must consider the landscapes too. Commissioner Swistak said the word on the street is that the Planning Commission has already done a lot of work and made a lot of decisions on this issue and it is simply not true.

Commissioner Cochran thinks lower Shoreby Hill has all that the National Registry says it does and maybe more. It is important that homeowners do not lose any rights but it is also important to keep the character of Jamestown. We need the homeowners to agree with us as far as importance.

Commissioner Pendlebury said Historic Districts become resources of value that we do not want to lose.

Town Planner Lisa Bryer said buildings and places have value in Jamestown. The preamble of our comprehensive community plan speaks directly to this issue in the discussion of rural character and about what this means for Jamestown. The same way history here in Jamestown is important to our character. I think we need to take a step back to make sure if the community is on the same page with us; does everybody agree. She went back to the last community survey and the community response to historic preservation? When asked about how they feel about the value of this history, whether it is historic buildings or landscapes, they feel strongly in favor of it but they are unsure of the regulation aspect. When asked about creating historic districts for the purpose of building regulation, the response has never been over 50 percent for the last 20 years. Then when asked if they are you in favor of the preservation of Historic Landscape and Historic Buildings the response is over 90% in favor. So this workshop should be more about gaining consensus of the importance of Jamestown's history than about addresses because once we start talking about specific buildings, the discussion quickly turns into a discussion about property rights.

Ms. Bryer has been thinking about the format of the workshop and would like to have several speakers and a facilitator. She asked Arnold Robinson who was the Town consultant for developing the National Register nomination for Shoreby Hill Historic District if he would speak at the workshop. He is a dynamic speaker and very passionate about his work. Don Powers was our main consultant for the Charrette and developed the design guidelines. Specific recommendations on Historic issues were made in the Vision Report. He is on board to speak and attend the workshop and Robert Leaver will facilitate it. This is where she would like to start with regards to the workshop. When we start talking about addresses and specific buildings it takes the discussion away from the question "do we think our history is important". She wants to shy away from the individual buildings maps right now and wants to focus more on education and consensus building. She asked the commission their thoughts on this.

Commissioner Swistak was here when Mr. Robinson came to speak to us and really liked what he had to say. Commissioner Cochran will work on questions with Ms. Bryer as will Commissioner Enright. Commissioner Pendlebury said if we have a workshop on the 15th of January he thinks we will need a second one too.

We need to get the word out. At the end of day we have to get a broader group of people to decide how we want to preserve our resources. We need to determine the area we are talking about, if we avoid it at the first meeting we need to have additional public input on that. Where do people start to push back, what will the regulations encompass?

A discussion ensued with regards to the overall schedule between now and June. January will be the first one and then February/March to fine tune. We will decide on a time at our next meeting and get flyers out and an article in the Jamestown Press.

Sav Rebecchi – great idea to get peoples input. He is speaking as a citizen. As a citizen who has spent a lot of time studying the town charter and served on the committee. He owns a publication and people speak to him. He brought up to the Town Council that we do not need the moratorium. In our code which he read from, he believes that the Planning Commission already has the authority to review any additions or modifications to a building designated as or eligible for the National Register.

Commissioner Pendlebury said the building official says it is not clear and he does not have a clear indication of what that really meant and there is no map in the zoning ordinance for him to be guided. Potentially is too vague of a word said Commissioner Jacquard that is why Fred Brown is not comfortable with enforcing it.


Jennifer Clancy, North Road –thinks it is premature to start talking about this, she thinks the workshop will be great, even when a survey is distributed sometimes the public does not know what you are asking and a workshop environment will help facilitate the public’s opinion. Commissioner Pendlebury would like to invite the Chamber to attend our next meeting and weigh in and give their thoughts on what does it mean. Also invite the Historical society.

The historical society has a written policy said Commissioner Enright and she can forward that information to us.

VI. New Business

A motion to adjourn was made by Commissioner Enright and seconded by Commissioner Cochran at 8:35 p.m. So unanimously voted.

Attest:



Cynthia L. Reppe
Planning Assistant

This meeting was digitally recorded