

**Approved As Written**  
**PLANNING COMMISSION MINUTES**  
**April 5, 2017**  
**7:00 PM**  
**Jamestown Town Hall**  
**93 Narragansett Ave.**

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

The meeting was called to order at 7:00 p.m. and the following members were present:

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

Not present:

Dana Prestigiacomio

Also present:

Lisa Bryer, AICP – Town Planner  
Jane Weidman – AICP – Planning Consultant  
Wyatt Brochu – Town Solicitor  
Cinthia Reppe – Planning Assistant  
Joseph Palumbo – Attorney  
Mark Liberati – Attorney  
Deb Fopert - Attorney  
Michael Darveau – Darveau Land Surveyor  
Michael Dutton – VP Enterprises LLC.  
Anne Kuhn Heinz – Conservation Commission member

**II. Approval of Minutes March 15<sup>th</sup>, 2017**

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

**III. Correspondence – nothing at this time**

**IV. Citizen’s Non-Agenda Item – nothing at this time**

**V. Reports**

1. Town Planner’s Report – sustainability will be discussed at the next meeting

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

## VI. Old Business

### 1. VP Enterprises LLC. Final Approval for Subdivision of Plat 1 Lot 61- 2 Lot Subdivision

Joseph Palumbo attorney representing VP Enterprises LLC. said everything is in order as far as he is concerned. Commissioner Swistak asked Jane Weidman to give a brief update to the Planning Commission and she went through all the items for final approval. Mr. Palumbo added that the road Prospect Ave. is going to be maintained by a Homeowners Association and there will be rights granted to the town in case something needs to be done by the town. Wyatt Brochu, town solicitor was consulted and he said everything is in order. Mr. Palumbo, Jane Weidman, Cyndee Reppe and myself met here at town hall a few weeks ago and went over finalizing everything.

Commissioner Swistak made a motion that was seconded by Commissioner Pendlebury to hereby grant final approval for the Prospect Avenue Subdivision for V.P. Enterprises, LLC, which was granted preliminary approval by the Planning Commission on June 17, 2009. The conditions of preliminary approval have been met as follows:

1. The payment of a fee in-lieu-of land dedication in the amount of \$5,042.20 shall be paid prior to recording;
2. Granite monuments have been placed at all corner points along the new property lines and at all angle points along the boundary with the private street, and are so indicated on the final plan;
3. The roadway has been constructed in accordance with the General Construction Procedures as listed in the Subdivision Regulations, Article XIII J including the required periodic inspections, as built drawings and inspection fee. A revised project certification was received on August 8, 2016 and signed by Michael DeFrancesco, P.E.;
4. The two potable wells were verified and tested to insure sufficient quantity and quality of drinking water, and favorable results submitted to the Town on August 8, 2016;
5. The applicant provided a watershed map of the site and surrounding area showing natural drainage patterns for pre- and post-conditions of the subject property for the purpose of ensuring future maintenance of those drainage patterns. The berm that blocked the natural drainage pattern at the end of Holly Street adjacent to lot 246 and Prospect Avenue Extension was removed to maintain existing runoff patterns;
6. This approval does not preclude the developers of each lot from complying with all applicable local and state regulations;
7. Final plans were updated to include the new lot line for the existing Holly Street that was accepted as a public road. The plans were revised to extend the proposed Prospect Avenue to connect to the existing Holly Street. Provisions were made to handle the runoff from the street extension to meet Holly Street;
8. The drainage was designed and the final sites graded in such a manner that there will be no additional runoff from the subdivision to adjacent properties or cause ponding on adjacent properties by impeding the natural runoff characteristics of the surrounding area.

9. The applicant has provided drainage easements across parcel 2 of the subdivision and the adjacent Lot 246. The easement was granted to the homeowners association and the Town of Jamestown and shall be recorded with the final plan and the deeds to the two individual lots;
10. The Town Solicitor has reviewed and approved homeowners association documents including the 1) ownership and maintenance of Prospect Avenue Extension as a private road, 2) maintenance of drainage and swale facilities located on Prospect Avenue Extension, 3) maintenance of areas subject to stormwater flowage and drainage easements on the two lots, and 4) drainage easements granted to the homeowners association and the Town of Jamestown on parcel 1, parcel 2 and Lot 246.
11. Per the covenant noted in Article IV C.2.c. of the Subdivision and Land Development Regulations stating that the Town of Jamestown shall not be asked or required to accept or maintain the private street including snow and ice removal for a period of 99 years from the date of recording prior to final approval, such restriction has been included in the homeowners association maintenance agreement and a note has been added to the final plan which shall be recorded contemporaneously with the homeowners association documents;
12. The newly created homeowners association will maintain and be responsible for Prospect Avenue at the intersection of Holly Street which is recognized as town owned property;
13. The Planning Commission reviewed the final plan as required by the Subdivision Regulations on April 5, 2017 and the signature of the Planning Chair shall appear on the final record plan; and
14. The final filing fee has been paid;

So voted:

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

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

Motion carries 6-0

## VII. New Business

1. **Susan J. Earley – Plat 1, Lot 324 – High Ground Water Table Impervious Overlay District –Zoning Ordinance Section 82-314 Sub District A Review and Section 82-308 Setback Freshwater Wetlands – Recommendation to Zoning Board**

Attorney Mark Liberati representing the applicant Susan Earley said the application concerns a lot of 37,798 sq. ft., it has an approved advanced treatment septic system and approved wetland edge by CRMC and DEM. They are asking for a distance variance approval with regards to setback to the wetlands.

Commissioner Pendlebury asked about dimensional setbacks, they have to follow the RR80 setbacks. Lisa Bryer confirmed. Commissioner Swistak asked about the relief required with regards to 308. The Conservation Commission was represented but have not met yet regarding this and can still make formal comments at the zoning board since they have not been able to review this at a meeting until next week. Commissioner Enright wants to know about the 10 foot setback

to wetlands. She has seen several distances that is confusing. Is it 25 or 50 feet? Are there standardized numbers?

A motion to accept Mike Darveau as expert witness was made by Commissioner Pfeiffer and seconded by Commissioner Swistak. All in favor.

Because this is in the vicinity of the coast CRMC requires all zoning approvals first so it is DEM and CRMC approvals in this case. They submitted in conjunction with wetland edge their preliminary determination says there is not an official buffer. They would like to see at least a 10 ft buffer. He explained what the different numbers mean to Commissioner Enright. He is in agreement with Scott Rabideau whose report is included in the packet. Commissioner Enright said she would like to see the Historic information that CRMC referred to. Mike Darveau said there was not anything of significance that CRMC noted.

Commissioner Swistak asked if buffers to wetlands are delineated or marked in the field? Darveau noted not in the field but they will have a 50 ft. buffer in this situation. CRMC may require markers.

Commissioner Pendlebury said he realizes the existing conditions of the site he thinks things could be shifted around that could make it closer to meeting the regulations. Well variances have been fairly easy to get he said. He suggested that the sand filter could be moved up towards the proposed house and put the septi tec closer to other house. Darveau noted that when the soil was first tested he performed other tests on the site and they did not meet the 12 inches and he will testify at zoning that he does not have another site to put the septic system.

Commissioner Swistak said we usually side with the Comp Plan. Mr. Liberati said it is not worded in the ordinance that says you cannot do it but you have to satisfy certain requirements and they think they have satisfied the requirements. Mr. Liberati said this is a permitted use and they are looking for dimensional variance. This development will not impact the wetland.

Lisa Bryer said the setback question on the side setback of 20 feet along Zennette appears to be incorrect. It is either 30 feet for a normal side or 40 feet if it is a corner side. They indicated that they would apply at zoning for a variance.

Commissioner Cochran asked about the removal of the trees does not encroach on the wetlands? No Darveau said.

Commissioner Swistak asked are the two lots in common ownership? Same family owns both lots.

Anne Kuhn Heinz a member of the Conservation Commission said she quickly reviewed this application and the Conservation Commission is wary of these large setbacks, the applicant has made an effort but this is a sensitive area. The Conservation Commission has not had a chance to look at this yet but they will next Tuesday and formally weigh in. The layout of the lot they have done the best positioning. They would like to see the setback enforced.

They want to send a formal letter to the zoning board.

Mr. Liberati said this system is designed and permitted for a 2 bedroom house and they are designed to reduce the bad chemistry coming out the bottom of the sand filter.

Commissioner Swistak went through the motion and amended it to include findings of fact additions and also more conditions of approval.

The motion was read and Commissioner Swistak asked Solicitor Brochu is there a precedent if this is approved? He said no, each application is different and based on its own merit specific to the uniqueness of the lot and what is proposed.

Commissioner Swistak wanted a straw vote before voting on the motion in case the wording needed to be changed.

Pfeiffer no, Cochran yes, Pendlebury yes, Smith yes, Enright no, Swistak yes.

Commissioner Swistak made a motion and Commissioner Pendlebury seconded the motion to recommend to the Jamestown Zoning Board, approval of the application Susan Earley – Assessor's Plat 1 Lot 324; being reviewed under Zoning Ordinance Section 308 and Section 314 - High Groundwater Table and Impervious Overlay District Sub-district A review in accordance with the plan entitled **PROPOSED SITE PLAN for, Susan J. Early, Plat 1, Lot 324, East Shore Road, Jamestown, RI 02835, dated Revised Mar. 15, 2017, by Darveau Land Surveying, Inc. P.O. Box 7918, Cumberland, RI 02864, Phone 401-475-5700**. The recommendation for approval is based on the following findings of facts as amended:

#### Findings of Fact

The applicant is proposing a new 24' x 44' dwelling on a 37,798 square foot lot with an existing forested wetland.

1. Based on soil evaluation reports, the subject lot is in sub-district A of the High Groundwater Table and Impervious Overlay District.
2. Plat 1 Lot 324 has an approved septi-Tech/BSF OWTS which meets the advanced treatment requirements of Zoning Ordinance Section 314. This approved OWTS is proposed at 51 feet from the delineated Freshwater Wetland. This does not meet the 150-foot setback required in Zoning Ordinance Section 308 and will require a Variance.
3. The applicant's representative Michael Darveau, PLS has submitted expert testimony before the Planning Commission on 4/5/17 as an expert witness with regards to 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. He noted that the OWTS has been sited in the best possible location based on site conditions.
4. A preliminary determination (D 2016-08-179) has been obtained from the CRMC which recommends a 10-foot wetland buffer.
5. Natural Resources Services Inc. has provided a narrative addressing Zoning Ordinance Section 308 review standards. It concludes that the construction of the OWTS within 51 feet of the forested wetland shall not have a significant adverse impact on the functions and values of the wetland area.
6. The lot is non-conforming in the RR80 Zoning District and is subject to the required setbacks.

7. Anne Kuhn Heinz, a member of the Conservation Commission stated although the Commission has received the application they have not met yet to review the application but she testified that there are serious concerns to setting a precedent related to siting an OWTS close to wetlands.
8. There were no comments from abutters on this application.
9. The applicant has submitted a proposed design suggesting “suitable native plants used in accordance with the Rhode Island Coastal Plant Guide prepared by URI. Rain Garden O & M details are shown on the Site Plan.
10. Jamestown Engineer Jean Lambert provided correspondence to Lisa Bryer, Town Planner dated March 27, 2017 regarding the Earley application with respect to Zoning Section 308 and 314 (attached) which notes that, the proposal, in her professional judgement, meets the requirements of Zoning Ordinance Section 314 as follows:
  - a. The proposed impervious cover is 3.7 percent (not including the house encroachment from the abutting lot). The applicant meets the maximum allowable impervious coverage limit of 10% as required.
  - b. The proposed 830 S.F. rain garden provides treatment for the 1” water quality volume and provides storage for runoff for a 10-year frequency storm event as required.
  - c. The proposed Septi-Tech/BSF OWTS meets the advanced treatment requirements and a two-bedroom deed restriction has been recorded in the Jamestown Land Evidence Records (RIDEM permit #0315-2732).

**Conditions of Approval**

1. The Operation and Maintenance (O & M) Plan (reproduced in 8.5” x 11” for the stormwater mitigation (rain garden) and OWTS 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.
2. An erosion and sediment control permit will be required from the building official prior to commencement of construction
3. An as-built plan should be provided depicting the house size, location, site grading and location of the rain garden and OWTS offset from the wetlands adjacent on lot 352.
4. The Applicant needs approval of an easement for driveway access to the adjacent house on Lot 352 prior to project approval.
5. Applicant may need side yard variance from Zennette Street and should meet with Zoning Enforcement Officer to determine the setbacks (is it a corner or side lot line).

So voted:

Michael Swistak – Aye  
Rosemary Enright – Nay  
Bernie Pfeiffer - Nay

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

Motion carries 4-2

**2. Edward Flanagan – 49 Bay View Dr. North – Plat 1 Lot 217 - High Ground Water Table Impervious Overlay District –Zoning Ordinance Section 82-314 Sub District A Review – Recommendation to Zoning Board**

Attorney Deb Fopert is representing the applicant Edward Flanagan. They will be using the current OWTS that is a 3 bedroom system that is servicing the current dwelling and garage. Impervious coverage is 10.6% currently. The applicant wants to raze the current structure. The planning department has reviewed this application and feels they have met the requirements. The proposed plans include raingardens.

Commissioner Enright wants to know about the house they are razing she saw that it was built in the 1800's would they allow the historical society to come take a look at it. Ms. Fopert said she thinks that would be OK. The owner has some pictures. It was an old sea captains house according to Lisa Bryer when she saw it previously.

Commissioner Swistak said should we be nitpicking about the percentage of coverage. Darveau said it is a rather large lot of 18000+ sq. ft. They are trying to keep the same square footage. They are eliminating the basement and building on a slab. Existing septic was put in a few years ago.

A motion was made by Commissioner Enright and seconded by Commissioner Cochran at which time Commissioner Swistak asked for discussion.

Discussion about the applicant changing the siting of the house and the separate garage, Darveau spoke to the owner about all of their concerns and it is placed where it is now if it is moved to the east then it sits right in the middle of the lot and it changes the way the lot is used, putting it where the house is now is reasonable. They have added the raingardens for any increase which they did not need to provide for the stormwater but they did. Lisa Bryer said looking at the location of the existing dwelling and putting it where they did in the same footprint was what the planning commission should want, less disturbance then a new area of impact. The front is exactly the same the back is a little different said Commissioner Enright but the one thing she does not understand is the siting of the garage. Commissioner Smith likes the design.

Solicitor Brochu would caution the Planning Commission from making a condition of approval on the dimensional variance as part of this motion. Such a definitive statement, you could request the zoning board look at the issue. Commissioner Pendlebury makes motion to modify condition #1 the Planning Commission wants the Zoning board to look at the dimensional variance. Commissioner Pfeiffer seconds the motion. Commissioner Smith does not agree. Deb Fopert said we are here on 314 issue not zoning issues.

After a discussion ensued the Planning Commission to add Finding of Fact that the applicant may have the ability to further mitigate dimensional relief.

The Motion was amended and approved as follows:

The Planning Commission voted unanimously to recommend to the Jamestown Zoning Board, approval of the application Edward Flanagan – Assessor's Plat 1 Lot 217; being reviewed under Zoning Ordinance Section 314 - High Groundwater Table and Impervious Overlay District Sub-

district A review in accordance with the plan entitled **PROPOSED SITE PLAN for, Edward P. Flanagan, Jr. , Plat 1, Lot 217, 49 Bay View Drive North, Jamestown, RI, dated Mar. 16, 2017, by Darveau Land Surveying, Inc. P.O. Box 7918, Cumberland, RI 02864, Phone 401-475-5700**. The recommendation for approval is based on the following findings of facts as amended:

Findings of Fact Section 314

The applicant is proposing a new 1360 square foot dwelling and a 576 square foot garage on a 18,255 square foot lot to replace an existing 1586 s.f. dwelling and 352 s.f. garage.

11. Based on soil evaluation reports, the subject lot is in sub-district A of the High Groundwater Table and Impervious Overlay District.
12. Plat 1 Lot 217 has an existing 3-bedroom OWTS with an “Advantex” treatment unit and a Bottomless Sand Filter disposal field which meets the advanced treatment requirements of Zoning Ordinance Section 314 and was installed in 2013. This property is serviced by a private well.
13. The applicant’s representative Michael Darveau, PLS has submitted expert testimony before the Planning Commission on 4/5/17 as an expert witness with regards to 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.
14. The existing and proposed dwellings are located 22.6 feet from North Bay View Drive, which does not meet the required setback of 40 feet and will require zoning relief in the form of a variance. As part of the Planning Commission discussion it was noted that the applicant may have the ability to further mitigate the relief requested for front yard setback.
15. Although the proposed structures do not increase the impervious cover over existing coverage, the applicant has submitted a proposed stormwater plan consisting of two rain gardens that provide 330 square feet of storage which provides treatment for the 1” water quality volume storm event.
16. It is an existing non-conforming lot by size and frontage in the RR-80 Zoning District.
17. The proposed rain garden design suggests planting “suitable native plants used in accordance with the Rhode Island Coastal Plant Guide” prepared by URI. Rain Garden O & M details are shown on the Site Plan.
18. Jamestown Engineer Jean Lambert provided correspondence to Lisa Bryer, Town Planner dated revised April 7, 2017 regarding the Flanagan application with respect to Zoning Section 314 (attached) which notes that, the proposal, in her professional judgement, meets the requirements of Zoning Ordinance Section 314 as follows:
  - d. The proposed impervious cover is 10.6 percent. The applicant exceeds the maximum allowable impervious coverage limit of 9% as required.
  - e. The applicant has proposed two rain gardens, one with approximately 230 square feet of storage for the house rooftop runoff and one with approximately 100 square feet of storage to handle the runoff from the new garage. The proposed rain gardens provide treatment for the 1” water quality volume storm event – no peak flow mitigation is proposed as there is no increase of impervious cover for the site.



**Recommended Conditions of Approval**

6. A Zoning variance will be required for the front yard setback of 22.6 where 40' is required as well as exceeding the maximum impervious cover with 10.6 percent where 9 percent is permitted.
7. A CRMC permit is required for the proposed improvements
8. The Operation and Maintenance (O & M) Plan (reproduced in 8.5" x 11" for the stormwater mitigation (rain garden) shall be recorded in the Office of the Town Clerk with the Zoning Approval and evidence of such shall be provided to the Building Official.
9. An erosion and sediment control permit will be required from the building official prior to commencement of construction
10. An as-built plan should be provided to the Building Official depicting the house size, location, site grading and location of the rain garden.

So voted:

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

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


Motion carries 6-0

A motion was made by Commissioner Swistak and seconded by Commissioner Enright to change the meeting start time to 7:30 start time for 1<sup>st</sup> meeting in May. All in Favor.

**VIII. Adjournment**

A motion was made by Commissioner Enright and seconded by Commissioner Pfeiffer to adjourn the meeting at 8:55. So unanimously voted.

Attest:

  
Cynthia L. Reppe  
Planning Assistant