

Approved 7-25-17
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JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the June 27, 2017 Meeting

A regular meeting of the Jamestown Zoning Board of Review was held at the Jamestown Town Hall, 93 Narragansett Avenue. The Chairman called the meeting to order at 7:00 p.m. The clerk called the roll and noted the following members present:

- Richard Boren, Chair
- Joseph Logan, Vice-Chair
- Dean Wagner, Member
- Richard Cribb, Member
- Marcy Coleman, 2nd Alt.
- Judith Bell, 3rd Alt.

Also present:

- Brenda Hanna, Stenographer
- Chris Costa, Zoning Officer
- Pat Westall, Zoning Clerk
- Wyatt Brochu, Counsel

MINUTES

Minutes of June 13, 2017

A motion was made by Dean Wagner and seconded by Joseph Logan to accept the minutes of the June 13, 2017 meeting as presented.

The motion carried by a vote of 5 -0.

Richard Boren, Joseph Logan, Dean Wagner, Richard Cribb and Marcy Coleman voted in favor of the motion.

Judith Bell was not seated and Terence Livingston and Edward Gromada were absent.

CORRESPONDENCE

Nothing at this time.

I. OLD BUSINESS

CONNORS

A motion was made by Richard Boren and seconded by Joseph Logan to deny the request of John R. Connors, whose property is located Frigate St., and further identified as Assessor's Plat 16, Lot 222 for a variance/special use permit from Article 3, Sections 308 & 314 to construct a single family dwelling and install a two bedroom OWTS on a sub district A lot (high groundwater table & impervious layer overlay district) and where the OWTS will be 51' from a forested wetland edge instead of the required 150 ft.

Regarding this request, this Board has determined that this application does not satisfy the requirements of ARTICLE 6, SECTION 600

Regarding the request for a Variance, this Board has determined that this application does not satisfy the requirements of ARTICLE 6, SECTION 606, PARAGRAPHS 1 through 4, and SECTION 607, PARAGRAPH 2.

Regarding the request for a Special Use Permit, this Board has determined that this application does not satisfy the requirements of ARTICLE 6, SECTION 602.

This motion is based on the following findings of fact.

1. Said property is located in an R40 Zone and contains 8,332 square feet.
2. This property is subject to Section 82-314 "High Ground Water Table and Impervious layer overlay district and is in Subdistrict A.
3. Section 82-314(C) "Development Within Subdistrict A" provides that any development within Subdistrict 'A' shall, after review by the Planning Commission, require a special use permit per Article Six from the Zoning Board of Review, after review and recommendation by the Planning Commission.
4. Section 82-314(C)(3) entitled "Individual Sewage Disposal Systems" provides
 - All proposals relating to the installation of an ISDS shall ensure that the system, once in use, will not pose a threat to the public health and safety nor cause any degradation of ground or surface water quality, including adverse effects due to cumulative impact. (*emphasis added*)
 - All proposals relating to the installation of an ISDS shall demonstrate that the design, siting and selection of technologies for the treatment and dispersal units are the most appropriate for the site.

- All proposals relating to the installation of an ISDS shall demonstrate that the project has been designed so as to minimize combined impacts related to the ISDS, storm water runoff and potential disturbances to wetland buffers.
(emphasis added)
5. Section 82-308 entitled "Setback From Fresh Water Wetlands" provides in section (A) that no sewage disposal trench, drain field, bottomless effluent filter, nor any component of a system designed to leach liquid wastes into the soil shall be located within 150 feet from a fresh water wetland edge, excluding the state designated perimeter wetland and river bank wetland.
 6. Section 82-308(B) entitled "Request for Dimensional Variances" provides that application may be made to the Zoning Board of Review for a dimensional variance seeking relief from the setback requirement contained in this section. All such applications shall be first referred to the Planning Commission for development plan review for an advisory opinion, per the requirements for development plan outlined in Section 82-314(C).
 7. Whether the applicant is proceeding under 82-308 for a dimensional variance or 82-314 for a special use permit, in either or both instances, the matter is reviewed in the first instance by the Planning Commission.
 8. Section 82-314 refers to a necessary and preliminary review and recommendation by the Planning Commission to the Zoning Board of Review.
 9. One of the Exhibits that was made part of the application file was a Memorandum from the Jamestown Planning Commission dated November 20, 2015. The Memorandum references review under Section 82-314 and Section 82-308. The Planning Commission voted five ayes and one abstention to recommend to the Jamestown Zoning Board denial of the application.¹
 10. The Planning Commission made twenty-nine findings of fact which included that the relief necessary conflicts with the Jamestown Comprehensive Plan. The Planning Commission noted the testimony of Dan Cotta, P.E., Maureen Coleman, representing the Conservation Commission, Scott, Rabideau of Natural Resources Services, Inc., correspondence from Environmental Scientist Justin Jobin, and Public Works Director Michael Grey, P.E.

¹ Although this motion to deny the request of application of John Connors is based upon the testimony of witnesses, their credibility, and the Exhibits, and not based upon whether as a matter of law the applicant can proceed before the Zoning Board of Review, the following should be noted:

- The Planning Commission decision of November 20, 2015 states "Recommend Denial". Does 82-314(C) require a positive recommendation for the Zoning Board of Review to act under 82-314(C)? Black's Law Dictionary defines "Recommendation" as the act of giving a favorable endorsement. Miriam Webster College Dictionary 10th Edition 1996 defines "Recommendation" as (1) to present as worthy of acceptance; (2) an endorsement as fit, worthy or competent; (3) to make acceptable.
- If there is in fact a recommendation of denial, can the applicant proceed directly before the Zoning Board of Review or must the applicant appeal the denial to the Zoning Board of Review, which in this particular case the applicant did not attempt?
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11. Daniel Cotta, Professional Engineer with American Engineering testified at the Zoning Board of Review on behalf of the applicant. Mr. Cotta testified that based upon four test holes for the project, the results establish that this application is a subdistrict A application. Further, Mr. Cotta testified that the maximum impervious coverage allowed is 12% and this application is 11.86%.
12. Mr. Cotta further testified that the existing site conditions of the lot were vacant, partially grassed and wooded. There is a fresh water wetland located in both south and east directions.
13. Mr. Cotta further testified that the storm water controls designed for this property on Frigate Street were designed in accordance with the Jamestown Storm Water Regs for a ten year storm.
14. Mr. Cotta further testified that the OWTS designed for this project is septic tank pre-treatment unit disposing to a bottomless sand filter designed to mitigate nitrogen to 50% down below 20 milligrams per liter, and BOD and TSS down below 20 milligrams per liter.
15. Mr. Cotta further testified that the primary reason for the location of the siting of the OWTS was to try to get it as far away from the wetland, and still a 91 foot special dimensional variance would still be needed.
16. Mr. Cotta further testified that the proposed OWTS is 51 feet from the wetland and he himself did not personally see the location of the wetland.
17. Mr. Cotta further testified that the wetlands is not on the Connor property, but it is on adjoining properties owned by the Jamestown Land Trust and the Town of Jamestown.
18. Mr. Cotta testified that he is not a wetland specialist and did not observe the wetlands.
19. Although Mr. Cotta testified that the OWTS is as far away from the wetland edge as he could possibly site it, Mr. Cotta did not observe and measure the wetland edge.
20. Mr. Cotta testified that it is not possible to install a system on the Connor lot that meets the 150 foot wetland edge setback.
21. Edward Avizinis testified, on behalf of the applicant. Mr. Avizinis is employed by Natural Resource Services, Inc. Marked as an Exhibit was an October 16, 2015 report prepared by Scott Rabideau, Principal of Natural Resources Services, Inc. Mr. Avizinis adopted that report as his own findings and independently familiarized himself with the Connor site and the surrounding area.
22. Mr. Avizinis adopted the approach Scott Rabideau took to map the wetlands edge, but did not go onto any adjoining property. Mr. Avizinis testified that in his belief, the nutrients coming out of the leach field are reduced already due to the advanced treatment, and the secondary processing of the effluence.

23. Mr. Avizinis testified that in his view, the implementation of this development proposal will not degrade the value of a wetland or water body.
24. Mr. Avizinis further testified that when he was recently on the property, he did notice an intermittent stream within the wetland and there are some seasonally flooded pockets throughout the wetlands.
25. John Connors testified that he purchased the lot approximately three years ago and is proposing a two bedroom house for a retirement home for he and his wife.
26. Mr. Connors testified that the total living area of the proposed dwelling is about 2,100 square feet. There would be no basement.
27. After the testimony of Mr. Cotta, Mr. Avizinis, and Mr. Connors, the applicant rested.
28. Christopher Mason testified and prepared a report at the request of the Town Planner and the Town of Jamestown. Mr. Mason is President and Principal Scientist of Mason Associates, an environmental consulting firm in Scituate, RI. Mr. Mason is a professional wetland scientist and has a certification in that field of study.
29. Approximately a year prior to testifying, Mr. Mason was contacted by the Jamestown Town Planner to prepare a peer review of the Natural Resources Services, Inc. report on October 16, 2015 that relates to Jamestown Ordinance Section 82-308.
30. Mr. Mason reviewed the report, other file materials, including the project plan and visited the area.
31. According to Mr. Mason, a peer review is essentially where a professional is engaged to do an independent review of some other professional's opinion in the same field by someone who is not associated with any of the projects, properties, or parties involved.
32. Mr. Mason reviewed his report and set forth his findings. Mr. Mason's first major finding was that he believes that the forested wetland edge is actually closer to the Connors lot than depicted on the plans. This was based on his inspection of the Town owned property.

Another major finding was that he believed that the Natural Resources Services, Inc. report did not go into enough detail on the wetland system as a whole. Mr. Mason further testified that he did contact the Conanicut Land Trust and with permission entered the property and examined the adjacent wetlands. Mr. Mason believed that that the NRS Report did not include enough detail to be able to evaluate the wetlands impact.

Mr. Mason's third major finding was that the flood plain associated with the adjacent wetland may actually extend into the Connors property.
33. Mr. Mason, in discussing the NRS Report and NRS' analysis of Section 82-308(B)

"Request for Dimensional Variance", testified that there was no supporting analysis or information that would support NRS' finding that the proposed onsite waste water treatment system was located a sufficient distance from the stream so as not to degrade the water quality. In Mr. Mason's further opinion, the NRS Report does not directly address the question of whether or not the project will impact the wetlands capacity to pollutants. However, it is Mr. Mason's opinion that the project would not significantly affect the wetlands or stream's ability to absorb pollutants.

34. Mr. Mason specifically disagreed with the NRS opinion that the project will not degrade the recreational or educational value of any wetland or water body. Mr. Mason noted that most of the subject wetland is owned by the Town and a portion is owned by the Conanicut Land Trust. There is a trail on the Town parcels that appears to be well used and it traverses several types of wetlands. The presence of a trail for wetland on public property provides an educational opportunity to learn about wetlands, wildlife, and water resources. The proposed development would be plainly visible to hikers on the trail due to the sparse understory near the development site. Mr. Mason further disagrees with the NRS report that there is no water body or water course within the subject wetland.
35. On cross-examination by the applicant's attorney, Mr. Mason conceded that he does not know for sure whether the septic system that is proposed is closer than 51 feet to what Mr. Mason has delineated. However, Mr. Mason testified that although the project may not have a specific impact on the intermittent stream, Mr. Mason's concern is "Cumulative Impact". As Mr. Mason testified, when you look at the amount of development that has already gone on in that 150 foot area, it has an overall effect or a cumulative impact on what is going on in the interior areas. Mr. Mason further testified that any of the development in this area has impacted an intermittent stream previously referred to.
36. Mr. Mason testified that this is not a pristine wetland area in any sense of the imagination, but it is, the last wetlands in the area and that increases its importance in some respect.
37. Under cross-examination, Mr. Mason agreed that where the applicant has proposed the siting of the septic system, is in fact the only place that it could be sited, which is as far away from the wetland as possible.
38. David Alberton Albrektson, 5 Schooner Avenue, Jamestown, RI sent a letter to the Zoning Board of Review in opposition to the application. Mr. Albrektson was of the opinion that the request to install a OWTS System within 51 feet of the wetlands where 150 feet is required is an exorbitant variance request. Mr. Albrektson implores the zoning board members to be mindful of the vulnerabilities of this densely populated neighborhood and determine that the variance requested be unreasonable and unacceptable.
39. Michelle Pages, 127 Frigate Avenue, Jamestown, RI, Robert Van Cleef and Trish Van Cleef, 133 Frigate Avenue, Jamestown, RI also spoke in opposition to the application. Mr. Van Cleef testified from a historical perspective. Nobody has lived on this

particular piece of property because it is wet and that development has occurred all around the property, but not that particular piece of property.

40. A September 14, 2015 report from the Jamestown Conservation Commission to the Jamestown Planning Commission set forth concerns of a variance of this magnitude as a potential to degrade the quality of ground water and the fresh water wetlands in the immediate vicinity. In light of six total concerns, the Conservation Commission voted unanimously to recommend against the approval of the variance request.

Analysis, Discussion, and Conclusion.

The applicant's property is located on Frigate Street and is within the high ground water table in impervious layer overlay district and is a Subdistrict A lot. Section 82-314 entitled "High Ground Water Table and Impervious Layer Overlay District" provides that this district encompasses areas of the town where natural physical limitations render the land unsuitable for development without restriction. These are areas where nonconforming lots predominate, no public sewer and water are available and the water table is within 4 feet below the original grade or where the depth to impervious layer is within 5 feet below the original grade. These conditions create severe limitations.

Section 82-314(C) entitled "Development Within Subdistrict A provides that any development within Subdistrict A shall after review by the Planning Commission, require a special use permit per Article Six from the Zoning Board of Review, after review and recommendation by the Planning Commission, in accord with the development standard special use permit contained in this section. Those standards are implemented in recognition among other things, the goals and pattern of land use contained in the Jamestown Comprehensive Plan, the need to protect the island's vulnerable and limited water supplies by maintaining maximum ground water recharge of rainfall and treated waste water to replenish drinking water supplies and avoid salt water intrusion.

Section 82-314(C)(3) entitled "Individual Sewage Disposal Systems" provides that all proposals relating to the installation of an ISDS shall ensure that the system once in use will not pose a threat to the public health and safety nor cause any degradation of ground or service water quality including adverse effects due to cumulative impact.

In this particular case, not only is the applicant seeking a special use permit under Section 82-314, but because of the proximity of the location of the lot to a fresh water wetlands, the applicant also seeks a dimensional variance from Section 82-308 entitled "Setback from Fresh Water Wetlands" which provides that no system designed to leach liquid waste into the soil shall be located within 150 feet from a fresh water wetland edge. It is not insignificant that the Planning Commission, after the taking of testimony, recommended against approving this application.

Comparing and analyzing the testimony of Ms. Avizinis and Mr. Mason, the testimony of Mr. Mason is more credible.

Thus, based upon the credibility of Mr. Mason, the questions he raised, the potential adverse effects due to cumulative impact, the Planning Commission Memorandum, and the Conservation Commission Report, it is hereby moved to deny the Connors' application.

The motion carried by a vote of 5 -0.

Richard Boren, Joseph Logan, Dean Wagner, Marcy Coleman, and Judith Bell voted in favor of the motion.

Richard Cribb was not seated and Terence Livingston and Edward Gromada were absent.

EARLEY

A motion was made by Richard Boren and seconded by Marcy Coleman to deny the request of Susan J. Earley, whose property is located at East Shore Rd., and further identified as Assessor's Plat 1, Lot 324 for a variance from Article 82, Section 308, (Setback from Freshwater Wetlands) and 82-300 (Regulation of Structures & Land), Table 3-2. Also a special use permit from Section 82-314 (High Groundwater Table & Impervious Overlay District) to construct a 2 bedroom home 20 ft. from the westerly property line (40 ft. required) & 51 ft. from the wetland (150 ft. required).

Regarding this request, this Board has determined that this application does not satisfy the requirements of ARTICLE 6, SECTION 600

Regarding the request for a Variance, this Board has determined that this application does not satisfy the requirements of ARTICLE 6, SECTION 606, PARAGRAPHS 1 through 4, and SECTION 607, PARAGRAPH 2.

Regarding the request for a Special Use Permit, this Board has determined that this application does not satisfy the requirements of ARTICLE 6, SECTION 602.

This motion is based on the following findings of fact:

- Said property is located in a RR80 zone and contains 37,798 sq. ft.

1. The applicant is proposing a setback from freshwater wetland. The plan proposes that the septic system be placed 51 feet away from the freshwater wetland.
2. The Town of Jamestown Zoning Ordinance Sec. 82-308. Setback from freshwater wetlands, states:

No sewage disposal trench, drain field, bottomless effluent filter, nor any component of a system designed to leach liquid wastes into the soil shall be located within 150 feet from a freshwater wetland edge, excluding the state designated perimeter wetland and riverbank wetland. For the purposes of this section, the freshwater wetland edge shall be the RIDEM verified edge of wetland. If the wetland is not on the subject property and in the absence of RIDEM verified wetland mapping on the adjacent property, then best available mapping should be utilized, as determined by the building official.
3. Dem rules and regulation require a 50 foot setback of a septic system to the edge of a wetland.
4. The Town of Jamestown has determined that that 150 feet is more appropriate to further protect the values and dynamic nature of its' freshwater ponds, the shoreline and its' freshwater wetlands, and the values of unique or valuable natural resources and features, which this board finds is reasonable and appropriate.
5. Mr. Avizinis, an employee of Natural Resource Services, Incorporated, Harrisville, Rhode Island, testified on behalf of the applicant.
6. Mr. Avizinis, testified he is a professional wetland scientist and certified professional soil scientist, he testified he conducts soil evaluations and testified for the applicant.
7. Mr. Avizinis, testified that he was hired to review site conditions with regard to water tables and wetland delineation and was qualified as an expert in that area.

8. Mr. Azivinis testified that he was familiar with Rhode Island septic system laws and regulations as a soil evaluator and not as licensed septic designer, but was familiar with the setbacks and the quality regulations concerning soil evaluations.
9. Mr. Azivinis testified "I know it (septic system placement) was not the ideal location", but it was dictated by soil conditions, the Board finds as a fact that the placement of the septic system was not the ideal location as it was too close to the edge of the wetlands.
10. Mr. Azivinis testified, that he "believed" the edge of the wetland was 51 feet from the proposed septic system and the board finds that there was no testimony as to how that figure was calculated.
11. Mr., Azivinis testified, "that he did not believe the septic system, if constructed, would degrade the quality of groundwater or any wetland because of the advanced treatment system and the sufficient distance from the wetland edge in addition to surrounding land use. The Board finds this testimony not credible and conclusory without any explanation as to how he arrived at his conclusions and not opined in any scientific certainty and therefore the Board rejects this testimony.
12. Mr. Azivinis testified, "He did not see the proposed design having an impact on constructing floodways or reduce net capacity to retain floodwaters. The Board finds this testimony not credible and conclusory without any explanation as to how he arrived at his conclusions and not opined in any scientific certainty and not worthy of belief and therefore the Board rejects this testimony.
13. Mr. Azivinis testified, the proposed septic design would not impact the recreational and educational value of the wetland. The Board finds this testimony not credible and conclusory without any explanation as to how he arrived at his conclusions and not opined in any scientific certainty and not worthy of belief and the Board rejects this testimony. Mr. Azivinis did not testify what the recreational and educational values of the wetlands were and therefore the Board rejects this testimony.
14. Mr. Azivinis testified, "That he did not believe the proposed design would reduce the capacity of the wetland to absorb pollutants. The Board finds this testimony not credible and conclusory without any explanation as to how he arrived at his

conclusions and not opined in any scientific certainty and not worthy of belief and therefore the Board rejects this testimony.

15. Mr. Azivinis testified, he believed, the capacity of the wetland to retain ground water would be maintained if the proposed septic system design were allowed. The Board finds this testimony not credible and conclusory without any explanation as to how he arrived at his conclusions and not opined in any scientific certainty and not worthy of belief and therefore the Board rejects this testimony.
16. Mr. Azivinis testified, he did not believe the proposed design would degrade the value of the wetlands supporting ground for a nursery, for fish, shellfish or habitat for wildlife. The Board finds this testimony not credible and conclusory without any explanation as to how he arrived at his conclusions and not opined in any scientific certainty and not worthy of belief and therefore the Board rejects this testimony. Mr. Azivinis did not testify as to what fish, shellfish or wildlife, if any inhabited the wetland and therefore the board rejects this testimony.
17. Mr. Azivinis, in his report dated January 3, 2017 stated that the Jamestown 150 foot setback requirement is a jurisdictional limit requiring the OWTS to be placed at that distance in the interest of the public health and the environment and the Board so finds and agrees.
18. Mr. Azivinis testified that the reason for the Town of Jamestown's 150 feet requirement of a septic system to a wetland is concerns about pollutants leaching into groundwater. The Board finds this as a fact and a legitimate and overriding concern regarding a project with such a large variance (99 feet) as the one proposed in this plan.
19. The Board reviewed a report submitted by James Houle, which was conclusory at best and is not helpful to the Board and rejects the report.
20. The Board finds that, the Town of Jamestown has a duly constituted Conservation commission.
21. The Zoning Board takes judicial notice that the Purpose of the Conservation Commission is to promote and develop the natural resources, protect the watershed resources, and preserve natural esthetic areas within municipalities.

22. The Conservation Commission as part of its duties, filed with the zoning board, their recommendations in regard to the proposed septic system.
23. The Conservation Commission found the current development and proposed site plans (project narrative prepared by Natural Resource Services, Inc., Edward Avizinis, dated 11/3/2017 and site plan prepared by Darveau Land Surveying, Inc. dated 11/15/2017) show an advanced onsite wastewater treatment system (OWTS) placed 51' feet from a freshwater wetland edge. Requiring a variance of 99'. The opinion of the Conservation Commission was that a variance of this magnitude has the potential to degrade the quality of groundwater and the freshwater wetlands in the immediate vicinity. The Jamestown Zoning Board of review accepts the Conservation Commission's opinion as being reasonable and credible.
24. The subject property is located within the Jamestown High Groundwater and Impervious Layer Overlay District.
25. Natural Resource Services, Inc., Edward Avizinis, found that when their staff visited the property in December 2015, there was an elevated seasonally high water table in other locations throughout the property and the Board accepts this as true.
26. The Conservation Commissioners were not convinced that the proposed development given the facts as found in paragraphs 24, 25, would not reduce the net capacity of the site to retain floodwaters. The Zoning Board members find this as grounded in fact, credible and reasonable and accepts this as fact.
27. An advanced technology OWTS has been proposed, (Septi-Tech),
28. In spite of the fact found in paragraph 26, The Conservation Commissioners were concerned that the extremely limited buffer (51 feet) between the proposed development and the freshwater wetland edge decreases the net capacity of the site to retain excess nutrients and other pollutants, and the zoning Board of Review accepts this fact as being credible and reasonable.
29. The Conservation Commission voted unanimously to recommend against the approval of this variance request and oppose wetland setback variances of this magnitude, and the Zoning Board finds this recommendation is grounded in fact, credible, reasonable and accepts its' recommendation.

30. Members of the Conservation Commission attended the Jamestown Planning Commission meeting on April 5, 2017, and voiced objections to the proposed variance based on the concerns noted above.
31. The Jamestown Planning Board's advisory opinion was to approve the project.
32. Two Jamestown residents spoke against the proposal as being unreasonable and unacceptable and exorbitant a variance of this magnitude 51 feet of wetlands where 150 feet is required should not be approved.
33. The Zoning Board rejects Town Engineer Jean Lambert's professional judgment as not helpful to the determination of the proposal.
34. Mr. Darveau testified that he is not a wetland expert. That he was not testifying about wetlands. He testified as to distances to wetlands, which is part of the surveying process. He testified as a surveyor. He did not testify what is or is not a wetland. The Board rejects Mr. Darveau's representation in so far as he states that the proposed septic system would not affect negatively the Wetlands as not credible.

The applicable ordinance, Sec. 82-308. Setback from freshwater wetlands, states in pertinent part; "No sewage disposal trench, drain field, bottomless effluent filter, nor , any component of a system designed to leach liquid wastes into the soil **shall** be located within 150 feet from a freshwater wetland edge, excluding the state designated perimeter wetland and riverbank wetland." The word "shall" in a statute or ordinance is usually mandatory language, so that in this case, there would be a prohibition on septic systems within 150 feet of a wetland edge. However, there are situations in a statutory scheme where "shall" is used more as a directive than mandatory. In the Jamestown ordinance at issue here. The ordinance also states that the Jamestown Zoning Board of review if an application is made for a dimensional variance, as the case by Ms. Early, then; "the zoning board shall consider the following minimum development standards (see Jamestown zoning ordinance 82-308(B) 1-8. The Jamestown Zoning Board of review has heard testimony and considered each of the factors contained in 82-308(B) 1-8. The Zoning Board's duty is too consider the factors, there is nothing in the ordinance, that would require the Jamestown Board of review to grant the application after considering the factors in 82-308(B) 1-8, it is still the Board' decision whether or not to grant or deny the petition.

The Board finds that the proposed use would, alter the general character of the surrounding area and impair the intent or purpose of the ordinance or comprehensive plan upon which the ordinance is based by negatively impacting the wetlands and wildlife habitat at the site, both during and after construction, and that the proposed use would have an adverse impact on areas beyond the construction site. In addition, the Board finds the hardship is due to the general characteristics of the surrounding area, wetland.

The evidence supported a finding that Ms. Early's request for a 99 foot variance from the 150 foot setback is unreasonable in light of the proposed use of the lot and the need to protect the wetlands. The evidence tending to show that a septic system within 51 feet of a wetland where 150 feet is required, that being a 99 foot variance would adversely impact the surrounding area and significantly impair the intent of the ordinance. The testimony of the applicant's expert was conclusory at best without any opinion based on a scientific certainty and without any realistic explanation as to how the expert, Mr. Azivinis arrived at his conclusions. The evidence contains competent, credible and reliable evidence for denial of the application.

After careful consideration of each and every one of the factors contained in the ordinance 82-308(B) 1-8, and after hearing all of the testimony and evidence, it is the Board's decision to deny the application.

The motion carried by a vote of 5 -0.

Richard Boren, Joseph Logan, Dean Wagner, Marcy Coleman, and Judith Bell voted in favor of the motion.

Richard Cribb was not seated and Terence Livingston and Edward Gromada were absent.

Ventrone

A motion was made by Marcy Coleman and seconded by Dean Wagner to grant the request of Richard Ventrone, whose property is located at 12 Nautilus St., and further identified as Assessor's Plat 5, Lot 305 for a variance from Article 3, Section 302 (District Dimensional Regulations) to construct a 20 x 20 one story detached

garage with a north & east setback of 5 ft. where 10 ft. is required.

This Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 600, SECTION 606, and SECTION 607, PARAGRAPH 2.

This Variance is granted with the following condition:

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This motion is based on the following findings of fact:

1. Said property is located in a R40 zone and contains 7,666 sq. ft.
2. The position of the existing driveway is limited based on the ISDS system.
3. The applicant testified that there is a physical hardship having to walk from the existing driveway due to the distance from the house.
4. The proposed garage is the smallest size possible to accommodate 2 vehicles.
5. The garage can't be positioned within the required setbacks due to proximity to the existing deck.
6. The 5 foot variance from the 10 foot setback is the least amount of relief necessary.
7. There is existing vegetation between the site of the proposed garage and neighboring homes.
8. No abutters testified in opposition.

The motion carried by a vote of 5 -0.

Richard Boren, Joseph Logan, Dean Wagner, Richard Cribb, and Marcy Coleman, voted in favor of the motion.

Judith Bell was not seated and Terence Livingston and Edward Gromada were absent.

Grover

A motion was made by Judith Bell and seconded by to Marcy Coleman to grant the request of Wayne A. Grover, whose property is located at 29 Bayberry Rd., and further identified as Assessor's Plat 12, Lot 61 for a variance from Article 3, Section 82-302 Table 3-2 and

Article 6, Section 82-607 variances to construct a deck on west side of home 18 ft. from front of lot instead of required 40 ft., and a rear yard setback of 12 ft. where 30 ft. is required.

This Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 600, SECTION 606, and SECTION 607, PARAGRAPH 2.

This Variance is granted with the following condition:

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This motion is based on the following findings of fact:

1. Said property is located in a R40 zone and contains 27,000 sq. ft.
2. The hardship from which the applicant seeks relief is due to the unique characteristics of the property.
3. The deck is to be 12' x 24' constructed on the west side of the residence.

The motion carried by a vote of 5 -0.

Richard Boren, Joseph Logan, Dean Wagner, Marcy Coleman, and Judith Bell voted in favor of the motion.

Richard Cribb was not seated and Terence Livingston and Edward Gromada were absent.

DiGregorio

A motion was made by Richard Cribb and seconded by Joseph Logan to grant the request of Enrico & Tracy DiGregorio, whose property is located at 80 Orient Ave., and further identified as Assessor's Plat 1, Lot 132 for a variance from Article 82-300 (Regulation of Structures & Land, Table 3-2 to add a garage, mud room and elevator 18.9 ft. from the northerly property line (30 ft. required).

This Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 600, SECTION 606, and SECTION 607, PARAGRAPH 2.

This Variance is granted with the following condition:

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This motion is based on the following findings of fact:

1. Said property is located in a RR80 zone and contains 29,778 sq. ft.
2. The applicant is seeking to realign his garage in order to facilitate automobile entry. The current alignment makes usability very difficult.
3. Due to health conditions the applicant needs to add an elevator to ease access to his main residence.
4. The area to the abutting neighbor is lined with trees so that the garage will not be visible to him.
5. There were no objectors to the application.

The motion carried by a vote of 5 -0.

Richard Boren, Joseph Logan, Dean Wagner, Richard Cribb, and Marcy Coleman voted in favor of the motion.

Judith Bell was not seated and Terence Livingston and Edward Gromada were absent.

Mainiero

A motion was made by Joseph Logan and seconded by Richard Cribb to grant the request of Douglas & Martha Mainiero, whose property is located at 11 Walcott Ave., and further identified as Assessor's Plat 9, Lot 291A for a variance, pursuant to Article 6, Sections 82-600 & 82-605, from Article 3, Section 82-302, Table 3-2, District Dimensional Regulations, to construct an addition on the property where the front setback is proposed to be 21 ft. where 40 ft. is required and the northern side setback is proposed to be 11 ft. where 20 ft. is required. Also a variance from Article 7, Section 82-705, Alteration of a nonconforming structure, to construct the addition as the current setbacks are: Front 26 ft. where 40 ft. is required & the northern side setback is currently 11 ft. where 20 ft. is required.

This Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 600, SECTION 606, and SECTION 607, PARAGRAPH 2.

This Variance is granted with the following condition:

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This motion is based on the following findings of fact:

1. Said property is located in a R40 zone and contains 42,395 sq. ft.
2. The proposed architectural changes will improve the appearance as supported by 3 neighbors.
3. There will be no further encroachment on the north setback.
4. The decrease in the front setback from 26' to 21' due to the addition of a porch, an improved architectural feature
5. The hardship is due to poor existing living accommodations and stairway not to code.
6. The lot to the north is not buildable.
7. The existing foundation will not be expanded.
8. The existing dwelling is a legal non-conforming structure.
9. One neighbor objected, saying that there is no hardship, without further explanations.

The motion carried by a vote of 5 -0.

Richard Boren, Joseph Logan, Richard Cribb, Marcy Coleman, and Judith Bell voted in favor of the motion.

Dean Wagner was recused and Terence Livingston and Edward Gromada were absent.

Pereira

A motion was made by Richard Boren and seconded by Joseph Logan to grant the request of Joseph L. Pereira, Jr., whose property is located at 58 Dory St., and further identified as Assessor's Plat 3, Lot 142 for a Special Use Permit, pursuant to Article 3, Section 82-314, High Groundwater Table & Impervious Overlay District, Sub-District A, & granted under Article 6, Sections 82-600 & 82-602, to construct a 24 ft. x 24 ft. addition, and a variance from Article 3 section 82-314(C)(4), Percent of Maximum Impervious Cover for Sub-District A, pursuant to Article 6, Sections 82-600 & 82-605, where the existing impervious lot coverage is 24.0% and the proposed impervious lot coverage is 15.5% and the allowable impervious lot coverage is 13%.

Regarding this request, this Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 600

Regarding the request for a Variance, this Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 606, PARAGRAPHS 1 through 4, and SECTION 607, PARAGRAPH 2.

Regarding the request for a Special Use Permit, this Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 602.

This Variance is granted with the following restriction(s):

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

The recommendations and conditions of the Planning Commission must be complied with.

This motion is based on the following findings of fact:

1. Said property is located in a R40 zone and contains 14,400 sq. ft.
2. The Planning Commission recommended approval.
3. The existing impervious lot coverage is 24%. This will be reduced to 15.5%.
4. The applicant will be consolidating and removing significant impervious lot coverage.
5. The addition will be a deck, a porch, and a garage.
6. There are no wetlands on the property.
7. There is a report from Jean Lambert, P.E. She notes that the existing paved walkway and driveway, concrete pads, and a shed will be removed.
8. A pervious gravel driveway is proposed.
9. The proposed garage will be built on a slab with a flow through foundation.
10. There were 3 objectors who set forth anecdotal issues, but not expert testimony.

The motion carried by a vote of 5 -0.

Richard Boren, Joseph Logan, Richard Cribb, Marcy Coleman, and Judith Bell voted in favor of the motion.

Dean Wagner was recused and Terence Livingston and Edward Gromada were absent.

ADJOURNMENT

A motion was made and seconded to adjourn at 9:20 p.m.

The motion carried unanimously.