

**Approved As Amended**  
**PLANNING COMMISSION MINUTES**  
**September 2, 2020**  
**7:00 PM**

**PURSUANT TO EXECUTIVE ORDER NO. 20-46 EXECUTED BY GOVERNOR GINA  
RAIMONDO ON MARCH 16, 2020**  
**THIS MEETING WAS TELECONFERENCED VIA ZOOM:**

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

The meeting was called to order Via Zoom at 7:03 p.m. and the following members were present:

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

Also present:

Lisa Bryer, AICP – Town Planner  
Wyatt Brochu – Town Solicitor  
Cinthia L Reppe – Planning Assistant  
Deb Foppert – Attorney  
Don Carlson – Applicant  
Laura Carlson – Applicant  
Frank Shirley – Architect  
Jonathan Miller – Architect  
Kristen Maccini – Attorney  
Mel and Barbara Whitaker - Abutter  
Peter Herne – Abutter  
Abby Campbell King – Architect

**II. Approval of Minutes August 19, 2020**

A motion was made by Commissioner Smith and seconded by Commissioner Cochran to accept the minutes as written. So unanimously voted by a show of hands.

**Approval of Minutes August 24, 2020**

A motion was made by Commissioner Smith and seconded by Commissioner Cochran to accept the minutes as written. So unanimously voted by a show of hands.

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

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

## V. Reports

1. Town Planner's Report – The Town Council accepted the memo from the Planning Commission regarding the Zoning Ordinance Amendment related to building height in the special flood hazard area. The hearing was continued to September 21<sup>st</sup>.

## VI. New Business

1. **20 Brook St. –Jamestown RI - Plat 9 Lot 281, owner/applicant Donald R. Carlson and Laura J. Carlson - Application for (Alteration of a 1989) Variance/Special Use Permit to allow an existing second dwelling unit on the lot to be replaced. Forwarded by the Zoning Board to the Planning Commission for Development Plan Review/Advisory Opinion; review, discussion and/or action and/or vote**

Town Planner Lisa Bryer said the application was heard by the zoning board on August 25 and they asked for an opinion from the planning commission. It is important to review her memo (attached) to see why we are reviewing this at planning. It is her opinion and Christ Costa agrees that this is just an advisory opinion since this application does not meet the standards for review in Article 11 therefore it does not apply here. The Zoning Board always has the right to ask for an advisory opinion and so that is what we will do in this instance. They also asked for TRC review and that occurred on Monday August 31 at 3pm and the Minutes and Memo from the TRC were distributed yesterday. At the TRC we started listing Findings of Fact, and we will hear from the applicant and abutters and there may be more Findings of Fact added.

Commissioner Swistak said our mission is to render an opinion and whatever result we have at the end of the evening is not binding it is advisory, not appealable just advisory.

Deb Foppert Attorney for the Carlson's, said a variance was granted by the Zoning Board in 1989 that converted this structure from a nursery school to an apartment under Article 331 at that time. A dimensional variance for setbacks and the use was granted at that time. It was determined then that it is an appropriate use. The motion carried unanimously. It has been a rental for over 30 years to non-family members.

Laura Carlson will be living there with their mother Jamie Carlson. Mold and age and general deterioration of the building is why they are tearing it down. They are making it fully "accessible" on one level and the top ½ story is a bedroom for a possible caregiver.

The Applicant went to the zoning board in March but due to timing and Covid this was postponed. Ms. Foppert explained the setbacks needed and the new application. Change must be sought under 303 – Number of residential structures per lot, similar to in 1989. Despite it appearing as an accessory structure, the applicant must comply. The property is located on a 22,000 sq. ft lot and they also own an additional adjacent 8000 sq. ft lot that is protected by conservation easement. Attorney Foppert noted the same hardship, just like in 1989, still applies. She introduced Architect Frank Shirley, a specialist in 1880s architecture.

Frank Shirley introduced his colleague and associate Jonathan Miller who is very familiar with zoning. Shirley noted that they were brought in by the Carlsons and tasked with creating a small cottage on their behalf. They looked at the existing dwelling and it is in disrepair and it has lost every element that was previously considered historical.

The goal and the plan they came up with will be providing Ms. **Jamie** Carlson with the ability to age in place. The directive of the Carlson's to have it a less imposing character to the north abutters, the Whitakers. The interior is designed for elderly accessibility. It was designed so that the architecture is matching the current home on the property. They have moved 6 feet farther away from Whitakers property and a 2 story structure will be eliminated too and replaced by a 1.5 story structure. They removed the deck which had a nice water view but were trying to eliminate the intrusion to the Whitakers on the North side.

In March the intention was going to be exactly on the same footprint and renovate but when they received reports from 2 structural engineers who said it is not viable, they decided to tear it down and make a beautiful structure and marry it well with the matriarch (bigger house). The existing footprint violates the setbacks so they went by the accessory structure setbacks since the new accessory structure is subordinate to the main structure. They put it within the accessory setbacks and it is 900 sq. ft. footprint which meets the requirements for an accessory structure in Zoning. It is fully compliant with the zoning of an accessory structure now. The other option they have is subdividing. They did not want to give up the green space on the existing lot which he feels is a gift to the neighborhood; they do not want to destroy that. If they subdivide they can put a big 4 bedroom house if they wanted.

The former owners, the O'Sullivan family made a deal as long as they have it as a dwelling unit they cannot subdivide. A major concession to the town was to not subdivide. They are willing to make the same concession. It can meet the setbacks as accessory and serves the same purpose as was in 1989. When their Mom cannot live alone Laura will probably move into it and her kids will move into the big house.

Kristen Maccini asked if the redesigned configuration will create a more conforming building than what is in place now. Can someone explain how a 441 sq ft building is not significantly less than the 900 sq ft proposed? How is it more conforming? Attorney Foppert responded that if it were not a dwelling it would be a conforming accessory building that sits on the appropriate setbacks and if not used as a dwelling in that sense it is more conforming and the way Frank designed it, it is a less intrusive façade to the north.

Commissioner Swistak told Ms. Maccini this is not the time for you to be interviewing the applicants. We are going to keep to our regular protocol.

Commissioner Swistak asked Ms. Foppert if she wants to follow up on the question. It is less nonconforming to what exists there now, Ms. Foppert said.

Don Carlson said neighbors want it 30 feet away from the rear property line and Frank Shirley looked to see if it could be done. His response was it destroys the balance of the property and the neighborhood by doing that. Typically, carriage houses and accessory structures are tucked into the rear portion of the lot and doing so meets Jamestown's Design guidelines. The Whitakers house is 15 feet from the rear lot line and does not conform to zoning. That is not Carlson's fault and they are trying to make it better by the proposed plan.

Frank Shirley said the siting of the building 6.2 feet further off property line and 2.11 farther east and that is why it is less non-conforming. In terms of the siting of the building they did look at

other locations and as the building moves towards Brook Street it overlaps the main house where it extends to the west. The 2 buildings would align and be about 11 feet between them where the existing porch and deck are. This is not what the design guidelines speak to. Siting the small building unusually close to the main building would be out of character. They discussed the neighborhood map where all the accessory structures towards the rear are shown.

Commissioner Pendlebury said as he understands it in 1989 the variance was allowed for this to be sited as an accessory structure. Leave it where it was which was non-conforming and allow it to be used as a 1 bedroom separate residence. We are now being asked to allow it to be sited as an accessory structure and now 2 bedrooms, Chris Costa determined at the TRC that it is a second primary structure not accessory.

Commissioner Cochran brought up Accessory Family Dwelling units and asked if that served their needs. At this point they would prefer to proceed as applied, Foppert said.

Commissioner Pendlebury said the 1100 sq. ft of living space is equal to or exceeds some houses in the shores, this is very complex and seems to be quite large. Has anyone thought about making it less large and allow it to fit perhaps better? Pendlebury said he walked through it when it was for sale and the condition of the 2<sup>nd</sup> structure is very poor and it needs too much work. This complicates things for everyone because it is in such poor condition.

Frank Shirley noted that the 900 square foot footprint includes the porch. The Porch is 90-95 sq ft. so it is around 800 sq ft. Mr. Shirley said there are many outbuildings that are larger than this. 9 Conancius has an accessory building that is 1028 sq.ft. with a 2 br 1 bath on a smaller lot, 64 green lane 1438sq. ft. on a lot of 16000 plus. These are all second structures. Pendlebury said he appreciates all the information. He does not disagree that the building is easily a candidate for replacement.

Ms. Foppert said she is responding to the statement about larger sq. ft on first floor is because of stair climbing. Laura Carlson said when you make a building fully accessible it increases the square footage for ADA requirements, the doorways have to be bigger. It is designed with ADA guidelines in mind. It is oversized to allow for walker or wheelchair.

Commissioner Cochran asked was there any talk of compromising and making maybe a 15-20 ft setback? More in conformance and not so intrusive. Mr. Carlson said the 20 ft brings it closer to Brook and they reached out and wanted an in person talk with the abutters and they were not interested and also Jeff Katz tried. The response was answered with 30 feet or nothing. TRC asked the applicant to confirm that if they receive this variance they will not subdivide. They agreed.

Pendlebury asked and if they do the AFDU that will still keep the right to subdivide.

Ms. Bryer noted yes. Bryer asked if anyone had anything else to add, she has a comprehensive Findings of Fact started.

Commissioner Enright asked what are the setbacks for an AFDU? If it is detached then it requires a special use permit if it does not meet the setbacks for the primary structure. In that instance we

would be looking at the SUP standards of compatibility etc. The process would be it starts at TRC then go to zoning for SUP. It would not come to the Planning Commission in that instance.

Mr. Herne an abutter said from his point of view if they move building from where it is now further towards the street it will block his view to the ocean. He sits west of building, he likes it further to the rear. If Mr. Carlson is going to build the smaller the better. That is his comment.

Kristen Maccini thinks the existing situation with the Whitaker's is for 50 years they have lived with this without trouble or complaint and largely due to the Whitaker's always helping neighbors. They have a very close building and it looks quite imposing but the prospect of a 900 sq. ft building with respect to blockage of light space etc. To confirm their interest they have a position of, the main house is 30 feet away and it is rather close. She is their council and it is their decision they say 30 feet is reasonable if it is larger.

Mrs. Whitaker said that Laura Carlson did kindly come over but once the high trees on the Carlson's property line, shielding them, was inadvertently removed by the landscaper because he thought they were diseased, she was not interested in negotiating. She said they did not rally people up but people came to them and asked what is going on and what do you think. They are rallying around the R8 zone and the trees made a huge difference in the view etc.

Swistak asked if it would be helpful to show the condition as the carriage house as far as restoration and pictures from structural engineer so we can move forward? Commissioner Pendlebury said he can assure them that it needs to be replaced.

Commissioner Swistak asked does zoning make a decision on what is presented?

Wyatt Brochu said it is much more difficult to make changes at the zoning board hearing without advertising again. Wyatt Brochu said they have to come back again if denied but for example they could not come back with a small change it is not that simple or automatic if the ZB hypothetically is looking like it may be a negative recommendation the applicants will request a continuance or withdraw to address the finality of it.

Ms. Foppert was asked by Commissioner Swistak for Planning purposes when do you expect to be back to zoning? Wyatt? They have to re-notice and re advertise.

Brochu said there is time and the zoning board members will read your advisory opinion from the Planning Board.

Mr. Carlson said he does not read mandatory review of article 11 they asked for a continuance it seems that now that ruling was incorrect and now they have been penalized. Does this committee agree that in fact this was a mis-reading of article 11 and not within the jurisdiction for them to send anything before planning? Lisa Bryer said the Zoning Board always have the ability to ask for an advisory opinion. Deb said the Zoning board would not grant a continuance. We can redirect to Chris Costa about the next meeting. Mr. Brochu said if the information is not changing then you are just dealing with advertising and notice. Don would like an answer as to Planning not having jurisdiction. Ms. Bryer and Mr. Costa determined it did not have jurisdiction in article 11 and the memo sent to the planning commission reviewed all the standards, but as noted previously we are providing an advisory opinion.

Mr. Carlson said since they sent it back we are not reviewing it under Article 11 but under Article 5. (501 A.5. – refer matters to the planning commission as they deem appropriate). Brochu doesn't have a comment on this. Foppert said they could have continued it but Brochu said that is not what they did. Brochu asked what is your point? Foppert asked do we have to re advertise since it is the same application? Yes. Brochu said if their decision was incorrect then you have to appeal that. Wyatt is not sure what the purpose is of this discussion whether it is the same or different it has to be advertised and abutter notice given. Don Carlson said it is going to cause them more time and money.

Commissioner Swistak said we will get back to the next steps now. And bring it back to planning commission and come to an agreement of how we are going to frame our opinion in our recommendation to zoning. What did zoning ask for? An opinion on the application? They feel they do not have jurisdiction under article 11 because it is not a substantial modification in a commercial district. If it cannot be reviewed under article 11 we are simply advising under the other provision that allows an advisory position. Bryer noted that it is not helping anyone if we simply send it back and say we do not have jurisdiction under Article 11.

Commissioner Swistak personally said there are a couple of layers. It is not I support or I don't; he would feel better if he could break this down to 4 different statements and components. He is in favor of this but also has some concerns.

Commissioner Cochran said it depends on where we go with this. Are we going to do a findings of fact? Yes, Swistak said, based on facts and Ms. Foppert's presentation and the team.

Peter Herne mentioned that if they replaced the trees with a 20 foot or 30-foot mature shrub would that help? Laura Carlson said she felt terrible about this and when the landscaper was taking out diseased trees he took these too. She was shocked and apologized when this happened last fall. It was not done intentionally. It hurt everyone. They have asked to meet with the neighbor several times and she would like to come to an agreeable solution.

Commissioner Cochran asked Mr. Herne is the water view north and east or east? It is east he said, they see down the street. 15 feet from property line will not obstruct the view of the west neighbor. Legally they could place it 18 feet from the front of the property and that would be as a right.

Commissioner Swistak is going to start the Findings and have a consensus of the board. The Carlson's are going to demolish and get something there. With proper screening maybe everybody would be fine and the new building sited reasonably close to where it is today will work with screening. Maybe at the end of the day it could be ok if more screening were provided with very mature trees. Based on the 1989 decision of the zoning board to allow the building to be rented he thinks it is fair to allow that use to be continued. Going to a larger house puts the Carlson's in a better position than the property owners were in 1989 he echoed Commissioner Pendlebury's opinion. Swistak says it would be easier to see if there was less sq. ft. than the 1,100+, it is not that easy to go back to the drawing board and redesign and the design is much better. They want to move ahead with the request for relief. With the AFDU I know you give up the right to rent and that is a loss. Some parts he is in favor of and some less enthusiastic.

Foppert asked if he would be more comfortable if the building was similar in size or total volume. Mike responded yes a smaller size than currently proposed is easier for them to endorse if not too big.

Wyatt Brochu said a legally significant point is the fact that the proposed structure is larger than what was proposed in 1989 and it should be well addressed.

Laura Carlson said one of the reasons for a small amount of extra space is due to the potential for caregiver space. Jamestown is in favor of keeping aging family members here but the historical homes from 17th and 18th century with small doorways and stairways much steeper do not accommodate this.

Ms. Maccini said she agrees with Brochu. Her second point is the Whitaker's are not stonewalling or stalling this project. She is offering for the planning commission to come to the Whitakers property and take a look and see the view. The sheer mass is more than twice as big, fences and greenery is why the Whitakers are not willing to compromise.

Frank Shirley corrected that the existing is not 400 sq ft it is existing 800 sq ft building total, important fact we are going from 800 to just under 1200. It is the outline of the footprint on the ground, the footprint that is larger but the second floor is less assuming volume wise.

Wyatt said the owners were granted a variance to convert to a 1 bedroom carriage unit and the current owners have that right.

Commissioner Enright said she understood that the other conditions say retain the building which would remove the rent and subdivide by demolishing the carriage house. The applicants have the right to a 1 bedroom and Rosemary asked if they demolish it, do they still have that right? Wyatt Brochu defers to Mr. Costa who would determine the relief requested. Bryer noted that she and Chris Costa have discussed and feel that once it is gone, all rights go away but she has asked Solicitor Brochu to weigh in on this also. His opinion can be swayed by legal advice.

Carlson assumed from the get go that the variance disappears with the demolish. They are petitioning for a variance too.

Swistak asked any solid thoughts on supporting this application?

Commissioner Smith likes the idea of the new house and thinks the setback should be 15 feet from the rear and then some plantings and he thinks the 15 is a good effort and the 7-foot side setback increase to 10 feet. He thinks the second bedroom is good for the second floor. Going from 10 to 15 feet in the rear. Go beyond the current proposal. Ms. Whitaker noted that the further it comes east it is right in front of their kitchen window; the 7 feet is fine and that is what zoning requires. Cochran agrees with Smith. Coming away from rear property line.

Commissioner Prestigiacomo has concern and understand as a caregiver but if it becomes a rental down the road a 2 bedroom could be more significant in that area.

Commissioner Enright said she is thinking the same way she would like to see it as a family unit and not as a rental then it makes sense since it would be a way of making money and not a necessity. She would like to see an AFDU.

Cochran is uncomfortable and supports it as a rental. We need smaller rentals on this island. This could be a regular rental and not short term he thinks it is discriminatory that to say no rental.

Lisa asked Brochu, can the zoning board put in the condition that says no short-term rental in their approval. Enforcement is the issue Brochu said. No comment on the hurdles of that.


Pendlebury agrees with what has been said. Whitakers house is 15 feet from the back property line if the applicant is willing to go 15 feet it is a good compromise. I know there is concern of breaking up the backyard this is an admirable compromise. Architect did a great job for least possible impact for the neighbors. A good effort he thinks it could be done with 1 bedroom but it is the family's decision.

They will be coming back on the 16<sup>th</sup> for a decision with points of emphasis for the zoning board. Commissioner Swistak will work on this with Ms. Bryer for the next planning meeting.

## **VII. Adjournment**

A motion was made by Commissioner Smith and seconded by Commissioner Enright to adjourn the meeting at 9:25 pm. So unanimously voted by a show of hands.

Attest:

  
Cynthia L. Reppe





## Technical Review Committee MEMORANDUM

**TO:** Planning Commission  
**FROM:** Technical Review Committee – Members present - Lisa Bryer,  
Town Planner, Chris Costa, Building Official, Michael Swistak,  
Planning Chair, Rosemary Enright, Planning Secretary  
**RE:** 20 Brook Street  
**DATE:** September 1, 2020

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The Technical Review Committee (TRC) met on August 31 to review the referenced application (see attached minutes). This application was sent to the TRC and Planning Commission from the Zoning Board of Review where they asked for an advisory opinion on this application and that this to be reviewed per Zoning Ordinance Article 11 – Jamestown Village Special Development District. The application dated July 24 gives the following facts on the application:

- 1) R-8 Zoning District;
- 2) The Lot is 22,000 square feet (where 8,000 are required per lot, for a single-family home);
- 3) The existing conditions on site include a main house and an ancillary, or secondary dwelling unit;
- 4) The existing secondary dwelling unit (on one lot) was granted permission to be such by a variance granted in January 1989. Relief was granted for side and rear setbacks at that time as well. That approval was conditioned that if the property is subdivided then the variance shall terminate;
- 5) The Zoning Officer, Chris Costa has made the determination that this proposal is two dwellings on one lot per 82-303 and not a house plus an accessory building per 82-311 and therefore both structures should meet the setbacks for a primary structure. Dimensional relief will be required for setbacks as proposed. The requested relief from Section 303 (limits one house per lot) is appropriately requested;
- 6) The application requests a new, 900 square ft, structurally and aesthetically improved, second dwelling unit to replace the existing 400 square ft dwelling that meets the setbacks of an accessory structure;
- 7) The relief is requested to appropriately house an elderly mother in the near term which includes making the living quarters “accessible”.

In reviewing the application with respect to Zoning Ordinance Article 11, we offer the following: Article 11 is specific about its applicability (Section 82-1101). R-8 is within the Jamestown Village Special Development District. Section 82-1101 I. states that development within the R-20 and R-8 Zoning Districts shall be reviewed by the Building Official during the building permit process to determine compliance with the development standards in Article 11. It continues to say that all applications for development, redevelopment, or expansion shall be filed with the Town Planner and shall be reviewed per section 82-411 except as noted in 1106-B and 1106 C.2. Section 82-411 C. Advisory Review (to PC) does not apply to this application because it does not meet any of the following criteria:

- Any application or action requiring a public hearing before the Planning Commission;
- Major Subdivision or Land Development Project;

- Minor Subdivisions or Land Development Project;
- Zone Change recommendations to the Town Council;
- Pre-application review of Major Subdivisions
- Development Plan Review under Article 11 of the Zoning Ordinance for applications meeting the definition of a Substantial Modification in the CL, CD, CW and P and including one or more of the following criteria:
  - 1) Is valued at more than 50% of the replacement cost of the entire building;
  - 2) New construction other than single family;
  - 3) Fifty percent or greater alteration of a building exterior
  - 4) Fifty percent or greater alteration of street façade;
  - 5) New use; or
  - 6) Expansion of use which requires more than 15 parking spaces.

Section 82-411 D. TRC Administrative Review does not apply to this application because it does not meet any of the following criteria:

- Pre-application review of Minor Subdivisions (if requested)
- Setting, reducing or releasing performance bonds
- Requests for reinstatement or extension of applications as required by Regulation
- Recommendations to the Town Council on matters other than zoning amendments as requested.
- Development Plan Review under Article 11 of the Zoning Ordinance for applications meeting one or more of the following criteria in the CL, CD, CW and P.
  - 1) the development of new single-family dwellings;
  - 2) a change in parking layout or the addition of up to 15 parking spaces; or
  - 3) a change in site design or lot coverage that changes the on-site drainage patterns and how stormwater may impact abutting or nearby properties.

The following findings of fact were noted at the meeting:

- 1) There is a lot of non-conforming structures in the neighborhood and the village. Having a subservient structure towards the rear of the lot is typified in the Jamestown Village Design Guidelines and suggested in the Zoning Ordinance Table 3-2 that outbuildings/accessory structures be setback 20' minimum plus the building setback.
- 2) The following relief is necessary for this application:
  - a. Section 303 (1 dwelling unit per lot) – previously granted by variance in 1989
  - b. Dimensional variance for setbacks
- 3) The placement of the replacement dwelling unit more appropriately sits towards the back of the lot and not in line with the existing historic house, where the required 30 foot setback would put it;
- 4) Moving the replacement dwelling unit towards the front of the lot would block the view of the neighbors to the west and disrupt the historic rhythm of the neighborhood;
- 5) There were 6 abutters on the Zoom call;
- 6) This property is subdividable into two lots and that by-right option seems less favorable to the character of the neighborhood than replacing the existing structure. Subdividing would remove the historic greenspace to the east of this lot and place another large structure in the neighborhood;

- 7) The applicants are willing to forego their right to subdivide if granted relief for their request;
- 8) An old, large cherry tree exists in the yard that would be disrupted if the setbacks for a primary structure were adhered to; and,
- 9) The TRC discussed the option of utilizing the Accessory Family Dwelling Unit section of the Zoning Ordinance in lieu of the current proposal.

**Recommendation:**

The Planning Commission should discuss providing an advisory recommendation to the Zoning Board.