

Approved as amended
PLANNING COMMISSION MINUTES
October 5, 2022
7:00 PM
Jamestown Town Hall
93 Narragansett Ave.

I. Call to Order and Roll Call

The meeting was called to order at 7:03pm and the following members were present:

Mike Swistak – Chair	Duncan Pendlebury – Vice Chair
Rosemary Enright, Secretary – arrived at 7:14pm.	Diane Harrison
Bernie Pfeiffer	Dana Prestigiacommo

Not present: Mick Cochran,

Also present:

Lisa Bryer, AICP – Town Planner

Carrie Kolb - Planning Assistant

Jeff Davis - Horsely Witten

David Petrarca, Jr., Esq. – Town Attorney with Ruggiero, Brochu & Petrarca

Patrick Freeman, PE, American Engineering

John Connors, Applicant 222 Beacon Ave

Christian Infantolino, Esq., Attorney for 35 Sloop Street

II. Citizen’s Non-Agenda Item - none

III. Correspondence

A. 91 Carr Lane Preliminary Plan Comprehensive Permit/ 3 Lot Subdivision Approval letter Letter was recognized as received.

IV. New Business

1. **High Groundwater Table and Impervious Overlay District – Zoning Ordinance Section 314 - Sub-district A review and recommendation to the Jamestown Zoning Board:**
 - A. **35 Sloop, LLC; AP 3 Lot 471, 35 Sloop Street, Jamestown, RI - review, discussion and/or action and/or vote**

Christian Infantolino, Esq., with Murphy Prior & Infantolino represented the applicant.

A motion was moved by Commissioner Swistak and seconded by Commissioner Pendlebury to accept Patrick Freeman, PE, with American Engineering as expert witness. All in favor. Patrick reviews the site plans of 35 Sloop Street, AP 3 Lot 471. The site is within High Groundwater Subdistrict A. The existing house will be demolished and a slightly smaller dwelling will be built in its place. Freeman described the well, OWTS and the addition of a rain garden to meet a 10-year storm. The impervious lot coverage will be reduced from 20.1% to 17.9%.

Commissioner Swistak asked if they are using the existing foundation? Freeman answered that they are using part of the existing foundation.

Commissioner Pendlebury asked if there is a crawl space? Freeman answered there is.

Commissioner Pfeiffer asked what the chances of making the drive way into something pervious?

Freeman answered that they are not proposing to remove the driveway because it is existing.

Discussion ensued. Commissioner Pendlebury noted that other lots in High Groundwater District have removed their impervious driveways. Commissioner Swistak asked Infantolino if removing the driveway was non-negotiable? Infantolino answered that he has not been authorized to remove the driveway. Discussion on the improvements to the property ensued.

The applicant called Infantolino, who received permission to accept the call in the hallway.

Infantolino was authorized to remove the concrete driveway and the new figure for impervious lot coverage is 10.3%.

Commissioner Enright asked if the porches and decks are permeable? Infantolino said that this could be a condition of approval.

Motion moved by Commissioner Swistak and seconded by Commissioner Pendlebury as follows:

At the October 5, 2022 Planning Commission meeting, the Planning Commission voted unanimously to recommend to the Jamestown Zoning Board, approval of the application of 35 Sloop LLC, applicant: AP 3 Lot 471, 35 Sloop Street, Jamestown, RI; being reviewed under Zoning Ordinance Section 314 - High Groundwater Table and Impervious Overlay District Sub-District A review in accordance with the plans entitled "Town Submission for 35 Sloop, LLC., Located at AP 3 Lot 471, Jamestown RI" dated 9/1/22, and the supporting material prepared by American Engineering, Inc., 400 South County Trail – Suite A 201, Exeter, RI 02822, 401-294-4090.

The recommendation for approval is based on the following findings of facts and recommended conditions of approval as noted in the Memo from Jean Lambert, PE dated September 21, 2022 and amended at the Planning Commission meeting:

Findings of Fact Section 314

1. The property is 8,177 square feet (sf) in area;
2. The existing site is developed with a house, concrete driveway, concrete stairway and a utility pad (total existing impervious area is **1,650 sf or 20.1%**);
3. Topography on the lot slopes from south to north on the site;
4. There are no freshwater wetlands on the property;

5. Soil evaluation results show that the site falls under **Sub-district “A”** requirements of the High Groundwater Table and Impervious Overlay District with 18” to the seasonal high-water table and 14” to impervious soil;
6. The maximum impervious cover allowed is **10.0% or 818 sf**;
7. The applicant is proposing to raze the existing house and rebuild a new house (843 sf) on a slightly different foundation;
8. The total proposed impervious cover will be **843 sf (10.3%), a decrease of 807 sf**;
9. The existing concrete driveway is to be removed and replaced by a permeable surface driveway;
10. A new advanced treatment OWTS (RIDEM #2115- 1472: Septitech to bottomless sand filter) is proposed. The OWTS permit is for 2-bedrooms and was issued on 7/15/2022;
11. A new rain garden is proposed. Although the applicant is proposing to decrease the impervious area on the site, **The existing site exceeds the allowable impervious cover area by 25 sf**;
12. Mitigation of the 10-year storm peak flow for the entire new 843 sf rooftop is provided. A rain garden with a total treatment volume of 224 cf is will be installed;
13. The applicant’s representative Patrick Freeman, PE of American Engineering, Inc, was accepted as an expert witness, and present at the Planning Commission meeting representing the application before the Planning Commission on October 5, 2022;
14. Jamestown Engineer Jean Lambert provided correspondence to the Building File and Lisa Bryer, Town Planner dated September 21, 2022 regarding the application (attached);
15. The proposed project proposes a reduction in impervious surfaces on the site from 20.1% existing to 10.3%, a reduction of 9.8%. The site exceeds the 10% allowable impervious cover but otherwise complies with the requirements of the HGWT.
16. The addition of stormwater mitigation and replacing an old substandard OWTS is a positive addition to the site and surrounding area;
17. The applicant will utilize part of the existing foundation as part of the new construction and the existing house and the new dwelling will have a crawl space.

Recommended Conditions of Approval

1. Erosion and sediment controls must be installed at the down gradient limits of site disturbance and maintained until stabilization of the site is attained;
2. After installation, Maintenance and inspection of the existing OWTS shall continue as required by the Town Onsite Wastewater Management Ordinance;
3. The rain gardens shown on the approved site plans must be installed and maintained as outlined on the notes on the approved site plan and the operation and maintenance plan. 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 Zoning Enforcement Officer as well as the Planning Department;
4. Any additional future site work including a change to the driveway surface that increases the area of impervious coverage will require a review following the requirements of the High Groundwater Ordinance;
5. Plans will be updated and reflect that the existing concrete driveway will be removed and replaced prior to submitting to the Zoning Board;

6. The applicant will confirm that the front and reach porches with no overhang are permeable and decks shall be permeable without lining;
7. Final review was completed administratively based on plan submitted 10/6/2022 illustrating removal of concrete driveway and replacing with crushed stone (attached).

So voted:

Commissioner Pendlebury - aye Commissioner Enright – aye

Commissioner Harrison – nay Commissioner Pfeiffer – aye

Commissioner Prestigiacomo - aye Commissioner Swistak - aye

Motion carries: 6-0

B. John & Pamela Connors, AP 16 Lot 73, 222 Beacon Ave, Jamestown, RI - review, discussion and/or action and/or vote

Patrick Freeman, PE with American Engineering also represents the applicant John Connors, who was present. The applicant is seeking recommendation to Zoning Board. The proposal is to develop the site with a 2-bedroom house, crushed stone or permeable paver driveway, deck well and an advanced treatment OWTS. The total proposed impervious cover will be 1,440 sf or 10.0%. An existing 120 sq ft shed that was previously allowed under the HGWT Ordinance exemption in September 2020 will remain. A rain garden is proposed to provide water quality treatment and stormwater mitigation.

Discussion ensued regarding permeable driveway. Bryer stated that the applicant need to look at the permeable coefficient for the pavers, and work with Jean Lambert at the building phase to ensure the impervious lot coverage does not change.

A motion moved by Commissioner Swistak and seconded by Commissioner Rosemary as follows:

At the October 5, 2022 Planning Commission meeting, the Planning Commission voted unanimously to recommend to the Jamestown Zoning Board, approval of the application of John and Pamela Connors, applicant: 222 Beacon Avenue AP 16 Lot 73, Jamestown, RI; being reviewed under Zoning Ordinance Section 314 - High Groundwater Table and Impervious Overlay District Sub-District A review in accordance with the plans entitled “Town Submission for John Connors, Located at AP 16 Lot 73, Jamestown RI” dated 9/1/22, and the supporting material prepared by American Engineering, Inc., 400 South County Trail – Suite A 201, Exeter, RI 02822, 401-294-4090.

The recommendation for approval is based on the following findings of facts and recommended conditions of approval as noted in the Memo from Jean Lambert, PE dated September 21, 2022 and amended at the Planning Commission meeting:

Findings of Fact Section 314

1. The property is 14,400 square feet (sf) in area;

2. The existing site is currently undeveloped. It is the site of the former Jamestown Shores “club house”. There is an existing shed on site;
3. Topography on the lot generally slopes to the northwest on the site towards Beacon Avenue;
4. There are no freshwater wetlands on the property;
5. Soil evaluation results show that the site falls under **Sub-district “A”** requirements of the High Groundwater Table and Impervious Overlay District with 18” to the seasonal high-water table and 60” to impervious soil;
6. The maximum impervious cover allowed is **10.0% or 1440 sf.**;
7. The applicant is proposing to develop the site with a house, crushed stone driveway, deck, well, and an advanced treatment OWTS (Septitech to bottomless sand filter: RIDEM #0215-0162). The OWTS permit for 2- bedrooms was issued on 8/11/2022;
8. The total proposed impervious cover will be **1440 sf or 10.0%**. An existing 120 sf shed that was previously allowed under the HGWT Ordinance exemption in September 2020 will remain;
9. A rain garden is proposed to provide water quality treatment and stormwater mitigation of new rooftop runoff. The required stormwater treatment volume for the new rooftop is 611 cubic feet (cf). The total proposed volume is 638 cf.;
10. The proposed impervious cover is **10.0%**. The maximum allowable impervious coverage is 10%. The rain garden provides treatment and mitigation for the new impervious rooftop in compliance with Section 314;
11. The applicant’s representative Patrick Freeman, PE of American Engineering, Inc, was accepted as an expert witness, and present at the Planning Commission meeting representing the application before the Planning Commission on October 5, 2022;
12. Jamestown Engineer Jean Lambert provided correspondence to the Building File and Lisa Bryer, Town Planner dated September 21, 2022 regarding the application (attached).

Recommended Conditions of Approval

1. Erosion and sediment controls must be installed at the down gradient limits of site disturbance and maintained until stabilization of the site is attained;
2. After installation, Maintenance and inspection of the existing OWTS shall continue as required by the Town Onsite Wastewater Management Ordinance;
3. The rain gardens shown on the approved site plans must be installed and maintained as outlined on the notes on the approved site plan and the operation and maintenance plan. 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 Zoning Enforcement Officer as well as the Planning Department;
4. Any additional future site work including a change to the driveway surface that increases the area of impervious coverage will require a review following the requirements of the High Groundwater Ordinance.

So voted:

Commissioner Pendlebury - aye	Commissioner Enright – aye
Commissioner Harrison – nay	Commissioner Pfeiffer – aye
Commissioner Prestigiacomo - aye	Commissioner Swistak - aye

Motion carries: 6-0

V. Old Business

1. **Jamestown Zoning Ordinance update - review, discussion and/or action and/or vote**
 - A. **Land Use Legislative Update concerning Accessory Dwelling Units, Cannabis, Required Education for Board Members and Quorum & Voting Changes from Ruggiero, Brochu & Petrarca**
 - B. **Legal Review of Accessory Dwelling Units, Cannabis and Zoning Board Quorum & Voting memos from Ursillo, Teitz & Ritch, Ltd. with Jeff Davis, Horsley Witten Group**

Petrarca and Davis presented together. Petrarca reviewed the changes to Accessory Dwelling Units (ADUs). ADUs can now be in primary structure or accessory structure. ADUs have a mandatory provision by-right in a primary owner-occupied residence for disabled family members or person 62 years of age or older or to accommodate other family members (which are not defined). Communities that permit ADUs shall not impose any excessive restrictions that are defined as: not limiting tenancy to familiar relationship, no unreasonable fees; require infrastructure improvements; impose unreasonable dimensional requirements, etc. ADUs shall be permitted by-right in any residential zone with a minimum lot size of 20,000 sq ft or greater. ADUs are to be included in a municipality low-and moderate-income housing attainment goals as a one-half unit. Municipalities are required to provide annual reports to the division of statewide planning on ADUs by February 1 of each year.

Davis stated that there is so much ambiguity with the law. The law will be interpreted differently by each town. He expects the law will be changed due to how it was written at the next session starting in January 2023. The question that is asked by towns: what do we do about this? Towns can choose to do nothing, which is not advised. Davis advised that Jamestown eliminate LMI/ADU and make some tweaks to the existing AFDU ordinance to comply with the new law.

Petrarca stated that that it is incumbent on Jamestown to decide: do you want to allow ADUs under the new law? It's an all or nothing proposition. The default is ADUs are not allowed. The Town has to take action to allow them. There are two types of ADUs are permitted by right in the new law: 1) a family ADU and 2) structure that is already existing within a zoning district over 20,000 sq ft. The law is not clear: 1) definition of family member and 2) any piece of land within a zoning district of 20,000 sq ft?

Davis stated that his interpretation is you can put in reasonable dimensional requirements and standards into the ordinance. The Town is not allowed to look at the ability to provide adequate water.

Commissioner Prestigiaco asked about providing adequate septic? Petrarca replied if there is a sewer connection then go by bedroom count by DEM.

Bryer stated that it's the same as the existing ordinance, if the property is not on town water and sewer then the applicant needs to comply with bedroom count by DEM.

Commissioner Swistak asked if there was no restriction on who can occupy an ADU? Petrarca answered correct. Commissioner Swistak asked if any restrictions can be placed? Davis stated

that you cannot explicitly place restrictions. Commissioner Swistak asked about renting for 12 months are year? Petrarca stated that the LMI section of the law needs a year-long lease but a standard ADU does not have any requirements.

Discussion ensued regarding the “existing structure” clause within the law. Existing structure is not defined. Davis views this as of July 1, 2022 and said to put that date in the ordinance. Petrarca gave an example of an applicant getting a permit to build a garage and once it is built coming in to get a permit to add a bathroom and kitchen, since it is an existing structure.

Commissioner Enright asks a question if a house could be cut in half and called a duplex? Davis said that the town can still have dimensional requirements and it is not unreasonable to say that you cannot do that. Bryer said that the current standard is that an AFDU is less than 33% of the total primary.

Commissioner Prestigiacomio asked Davis if Horsley Witten will come up with a proposal? Davis answered yes that this evening he wanted to get the feelings of the Commission. Bryer brought up that the short-term rental ordinance states that they are not permitted in accessory structures.

Bob Plain, 18 Calvert Place, Chair of the Jamestown Affordable Housing Committee stated that he thinks that ADUs are a good idea. This law was designed for the Jamestown’s of the State because we have not met the minimum for affordable housing. He thinks the town has to be proactive and do something. He thinks that the lawmakers and the law are being vague because we are not doing enough. ADUs are a way to have police, fire fighters, servers as a way to live in the community.

Discussion about water and ADUs ensued. Commissioner Enright stated that there are water and sewer problems. The zoning in the shores area allows for ADUs. We can’t do much about water. The big houses aren’t able to produce the water that is needed. We have to link water and sewer to ADUs. Commissioner Prestigiacomio asked if we can link a series of guidelines or restrictions for water? Davis answered no.

Discussion ensued about what should be in the Jamestown ordinance. Davis stated that the Town should start with the new law minimums, look at the dimensional requirements, add the date in July 2022 for existing structures by right, add 20,000 sq ft zoning by right, and make some other tweaks.

Mandatory Continuing Education:

Petrarca stated starting in January 2023 the Commission will have to complete 3 hours of annual continuing education, and an hour of continuing education each year after that. He is checking if the presentation this evening will count towards the requirement.

Quorum and Voting Amendments

A simple majority of the board present is what is needed moving forward. As of January 1, 2023.

Low- and Moderate-Income Housing Act

Petrarca stated the same voting rules for Quorum apply with simple majority of members present when a Board votes on LMI Housing.

Cannabis

Petrarca stated RI Cannabis Act passed. The Town has put the issue before the voters, and if it passes then the Town must have an Ordinance to address the four issues. Davis stated that Bryer asked him to draft a cannabis ordinance. There is not much wiggle room in this because all the definitions come from the state. There has to be at least one zone where things are allowed. CD District makes the most sense. Prohibiting within 500 feet of public and private schools is a pre-existing.

Commissioner Prestigiaco asked if public and private schools includes daycare? Can we add daycare? Davis replied – no it does not include daycare and daycare cannot be added.

Commissioner Swistak asked if the Town could have final approval of the ordinance before 12-1-22, the date that the State has given?

Petrarca stated that the State does not have the applications ready for use ready yet. Bryer said that if the Town is not ready with Zoning Ordinances by 12-1-22 then cannabis can go anywhere in the Town.

Commissioner Swistak gave the option for the Planning Commission to meet on November 9, the day after the referendum, instead of November 2.

Petrarca suggested that cannabis be on the next agenda timing of the proposed ordinance be discussed. Another option is for the Planning Commission to send proposed Zoning Ordinances to Town Council after meeting on October 19th and then the Town Planner will work with Town Clerk for advertising.

VI. Reports

1. Planner's Report –
 - Future meetings – topics and applications

Bryer gave the update that Mike Gray is returning as the Public Works Director. Peter Medeiros has been hired as the new Building Official and Zoning Officer. Medeiros comes from Little Compton and lives in Middletown and will start on October 11th.

The meeting on October 19th will have a presentation on the Jamestown Energy Plan and there will be time for discussion and review of Zoning Ordinance issues like ADUs and Cannabis.

VII. Approval of Minutes – review, discussion and/or action and/or vote

1. September 21, 2022

A motion was moved by Commissioner Pfeiffer and seconded by Commissioner Harrison to approve the minutes from September 21, 2022 as written. Commissioner Swistak and Commissioner Enright abstain from voting. All in favor.

VIII. Adjournment

A motion to adjourn at 9:34 pm was moved by Commissioner Enright and seconded by Commissioner Pendlebury. So unanimously voted.

Attest:

Carrie Kolb