

Approved as amended  
**PLANNING COMMISSION MEETING**  
**August 7, 2024**  
**6:30 PM**  
**Jamestown Town Hall**  
**93 Narragansett Ave.**

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

The meeting was called to order at 6:33 p.m. The following members were present:

Michael Swistak, Chair

Duncan Pendlebury – Vice Chair

Mick Cochran

Rosemary Enright – Secretary

Diane Harrison

Bernie Pfeiffer

Dana Prestigiacomio

Also present:

Lisa Bryer, AICP - Town Planner

Carrie Kolb – Planning Assistant

David Petrarca, Esq. – Ruggiero, Brochu & Petrarca

Dennis Webster

**II. Citizen’s Non-Agenda Item -none**

**III. Correspondence**

1. UDR decision for Joseph and Mary Ellen Walek, AP 9 Lot 639, 117 Howland Avenue  
Correspondence was recognized as received.

**IV. New Business – Review, Discussion and/or Action and/or Vote**

1. Presentation and Discussion with Solicitor David Petrarca, Jr. Esq, regarding Unified  
Development. Review, Discussion and/or Action and/or Vote.

Petrarca said that land-use laws in RI have undergone significant changes since 1991. The past legislative session at the state level have cleaned up some of the laws. An example is Unified Development Review (UDR), which used to be optional and now it is mandatory. UDR has Zoning and Planning Review at the same time, similar to a Comprehensive Permit with affordable housing review.

Petrarca explained that the Zoning standards for dimensional variance have changed. There is no longer a consideration of “primarily for financial gain”. There is no longer “the least relief necessary.” Petrarca has templates that he will share with town staff. The old language was “The hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than an inconvenience.” And the standard used to

end there. This next sentence was added, and Petrarca says it will be up to the courts to decide the meaning of the added phrase, “Meaning the relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted.” The change from the least relief necessary to reasonable enjoyment relief, in theory, means that the smallest possible project or smallest possible deviation are no longer required. But by how much “reasonable enjoyment”, is a matter of interpretation.

The rest of the dimensional variance standards remain the same, which include:

- Hardship being due to the unique characteristics of the subject land or structure and not the general characteristics of the surrounding area or due to the physical or economic disability of the applicant
- The hardship cannot result from any prior action of the applicant
- The granting of the requested variance will not alter the general characteristic of the surrounding area nor impair the intent or purpose of the Town’s zoning ordinance or comprehensive plan

Special Use Permits (SUP) are the other area that has changed. Previously, if a use was not in the use table it was deemed prohibited because it was not allowed by right or special use. Now the zoning official is charged with finding a place to make it fit by the closest use and seeing now it fits into the zone. Standards for granting or denying a SUP were previously based on general property by property standards. Now each SUP needs to have specific and objective criteria.

Bryer asked Petrarca to discuss how UDR process is like a Comprehensive Permit.

Petrarca said that the precedence of approval still exists in State law. The decisions that the planning commission makes on UDRs should have the zoning findings/relief first before you get into the plan requirements. All decisions of planning are now directly appealable to superior court. Petrarca suggested having a stenographer at all meetings.

Bryer asked Petrarca to discuss the standards. Petrarca said with a dimensional variance each case is reviewed on a case by case basis. What is the hardship? Why can’t the applicant meet the requirement? The burden is on the applicant to show that they will suffer from more than a mere inconvenience. The applicant has to put forth evidence for the record, the planning commission has to find them credible, especially with opposing testimony. The example of “wanting a bigger house” is not a good reason. But if the reasoning is “I would like a bigger house because the one that fits will not allow more than one child”, or something to that effect. Petrarca said that each case is going to be unique and one application does not set precedence.

Bryer asked how much weight should be given on testimony? Petrarca said that it varies case by case. There is expert testimony and lay testimony. An argument by an attorney is not evidence, but testimony from an abutter is evidence.

Commissioner Pendlebury asked if an application comes in that they suspect has a conflict with the building code, can it be tabled and sent to the building official? Petrarca said that it depends on the application and timeframes. Bryer asked about making an issue a condition of approval? Commissioner Pendlebury asked if there will still be TRC meetings with UDR applications. Bryer said yes. Commissioner Pendlebury said that building code issues can be discussed in TRC. Petrarca brought up that other communities are having TRC meetings for administrative subdivision, and other towns are sending notice to abutters for TRC at cost to the town.

Commissioner Swistak gave the example where the commission is a hard no on application. The applicant wants to go to court and prevails. Does expense to go to court come back to the Town? Petrarca said that the town may have to pay for attorney and court costs if the applicant prevails and the court finds that there wasn't a reasonable basis for the denial, and certain financial thresholds are met by the applicant.

Commissioner Swistak asked about finding somebody not credible. Will finding someone not credible put the town or the commission in trouble? Petrarca said that in the US anybody can sue for anything, but it doesn't mean that they will prevail. Credibility is not reviewable by an appellate court and you can find someone not believable. If not credible, it helps to give a reason in the record, but it is not necessary. Commissioner Swistak asked if there is a complication, what do we do? Petrarca said if there is time within the application timeframe, the decision can be reviewed at the next meeting. Staff can be asked ahead of applications to write decisions based on both approval and denial ahead of time.

Discussion ensued on marking exhibits. Petrarca said that each exhibit needs to be individually marked and photographs should not be grouped together.

Commissioner Swistak asked about dimensional relief and the unclear language. What does it really mean? Petrarca said it doesn't have to be minimum but it doesn't mean the maximum. The example was given if when building a house, the consequence for meeting minimum results in ceilings that are too low. It is ok to build a house with higher ceilings, but it doesn't need to be a McMansion on the other extreme. Commissioner Swistak asked about an application that comes before them that is for a McMansion but the commission feels a lot less could be done but not the minimum. Petrarca said that the commission can continue the meeting and ask the applicant to come back asking for less relief. If the continued meeting is date certain and less relief is required, then re-notification is not required. The commission can also take a recess during the meeting where an attorney or representative can speak with their client. There is an ability to work with the applicant during the meeting. Bryer asked if the timeclock is running out and the commission doesn't have building code clarified, what should they do? Petrarca said if there is not enough evidence, that is a reason to deny.

## 2. Jamestown Water Supply Management Plan – Executive Summary – Discussion

This item will be deferred to another meeting. Commissioner Swistak would like to clarify the role of the planning commission in regards to water supply.

Bryer said that this plan will be reviewed in updating the Comprehensive Plan. This plan looked at the number of bedrooms as well as number of persons per household based on the census and it was important to explain why we are hitting peak demand now in the summer months. The plan was approved by the Town Council and is located on the public works page on the website.

**V. Old Business - Review, Discussion and/or Action and/or Vote**

1. Zoning Ordinance Amendments – Related to Multi-Family Housing, RIGL 45-24-38 – Review, Discussion and/or Action and/or Vote
  - a. Multi-family housing moratorium – Recommendation to Town Council for 6-month extension until March 18, 2025 or until amendments are approved.

Bryer said that she would like to request from the Town Council a 3–6-month extension on the moratorium on multi-family housing.

A motion was moved by Commissioner Cochran and seconded by Commissioner Enright to recommend another six-month moratorium on multi-family housing to the Town Council.

So voted:

Commissioner Pendlebury – aye

Commissioner Cochran – aye

Commissioner Enright – aye

Commissioner Harrison – aye

Commissioner Pfeiffer – aye

Commissioner Prestigiacomo – aye

Commissioner Swistak - aye

Motion passes 7-0.

Discussion of multi-family dwellings based on the examples from the Town Planner’s memo were discussed. Commissioner Swistak would have liked to have gone smaller, but he understands that this a compromise. He is concerned about total people, vehicles, traffic and water. Commissioner Prestigiacomo asked if there were smaller alternatives? Bryer said that smaller numbers does not equate to smaller sized units.

Dennis Webster of 22 Mount Hope Avenue said that he likes this proposal better. He would like to see the front side setbacks for R 20 and R 8 increased for multi-family dwellings. Bryer explained that setbacks should be equal to single family dwellings.

A motion was moved by Commissioner Swistak and seconded by Commissioner Pendlebury to approve the proposed changes to multi-family dwellings in the zoning ordinance amendments. All in favor.

2. Subdivision and Land Development Regulations Amendments – Final Revisions – Review, Discussion and/or Action and/or Vote
  - a. Approval and authorization for Planning Commission public hearing recommended date September 18, 2024

Bryer said that this is round two of changes to the Subdivision Regulations and the first round of changes was made in March when Jeff Davis of Horsley Witten gave a presentation at the meeting. Bryer said that the changes made have come from the legislative sessions of 2023 and 2024, and they have to be accepted. Bryer said that the pages given are only the pages with changes on them, and she described the changes on each page. See attached review copy.

A motion was moved by Commissioner Swistak and seconded by Commissioner Cochran to approve the final changes to subdivision regulations made at the August 7 2024 meeting. All in favor.

## **VI. Reports**

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

Bryer told the Planning Commission about the next few meetings:

August 21 meeting will be the UDR for the Golf Course and possibly Community Development Block Grant Review.

September 4 we may not have a meeting that evening

September 18 will be a normally scheduled meeting.

## **VII. Adjournment**

A motion to adjourn at 8:45 pm was moved by Commissioner Enright and seconded by Commissioner Cochran. All in favor.

Attest:

Carrie Kolb