

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, November 13, 2012 at 6:00 p.m. in Conference Room A, Administration Building, One Capitol Hill, Providence, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
David Abedon
Ronald Gagnon
Raymond Coia
Donald Gomez
Michael Hudner
Tony Affigne
Guillaume deRamel

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David S. Reis, Spv Environmental Scientist
Thomas A. Medeiros, Prin Civil Engineer

Brian A. Goldman, Esq.

Members Excused

Jerry Sahagian

1. CALL TO ORDER

Chair Livingston called the meeting to order at 6:00 p.m.

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

Vice Chair Lemont motioned, seconded by Mr. Coia, approval of the minutes from the October 23, 2012 Semimonthly meeting. Motion carried on unanimous voice vote.

3. SUBCOMMITTEE REPORTS

None

4. STAFF REPORTS

Mr. Fugate made a presentation briefing the Council on Tropical Storm Sandy and how the CRMC is handling the after storm permitting and rebuilding process. Mr. Fugate explained that regular permitting was suspended for a two week period and explained the emergency permitting process being implemented in the CRMC offices. Mr. Fugate also updated the Council on the storm damage to certain areas of the State such as Atlantic Avenue in Westerly. Mr. Fugate informed the Council members of the meeting held at CRMC for the State Building Commission, DEM, RIEMA and flood insurance people as well as some building officials that were interested.

5. Council Action on Executive Director's Recommendation Regarding the Completeness of the DeepWater Wind Application.

Mr. Fugate gave a brief overview of the DeepWater Application to the Council and the process that it has gone through to date. Mr. Fugate stated that there are a few more items needed for review but that sufficient information has been submitted for the application to start the Public Notice process. Mr. Fugate asked that the public notice process be extended to 60 days rather than the typical 30 days as the

information needed to be reviewed is extensive. Mr. Gagnon informed the Council that the RIDEM will be joining CRMC in a 60 day Public Notice period and that they are trying to coordinate with CRMC to have the notices go out at the same time. Mr. Affigne motioned, seconded by Mr. Gomez, to have the Deepwater Wind application go through a 60 day public notice period. Motion carried on unanimous voice vote.

Chair Livingston informed the Council that the applications for Quidnessett Country Club and Joseph and Jean Katarincic had requested a continuance which was granted.

6. Applications which have been out to 30 day notice and are before the Full Council for Decision:

2012-05-079 BRENT MOORE – Construct and maintain a single family dwelling, OWTS, rain garden, driveway and associated landscaping. Located at plat 32, lot 166; 8 John Sisson Road, Little Compton, RI.

Brent Moore, property owner, was present; along with his attorney, Stetson Eddy, Esq, his environmental consultant Scott Rabideau, and his engineer, William Smith, PE. Mr. Reis gave a brief overview of the application to the Council stating that the application required a 150' buffer and the applicant was proposing a 50 foot buffer with submitted information requesting a variance. Mr. Reis stated that based on the site constraints and the staff's review of the variance criteria, staff has no objection to the application. Mr. Gomez commended staff on their review of the application and asked for clarification of the rain garden. Mr. Reis explained that runoff from the roof will go into the rain garden which will be a small rectangular depression six inches deep which will hold the first inch of runoff from the rooftop. Mr. Reis stated that the rain garden was one of the reasons why staff had no objection to the application and explained that the plantings were used to stabilize the depression and side slopes and to help absorb nitrogen and such that could be present in the rooftop runoff. Mr. Eddy gave a brief presentation to the Council on the application and a history of the property. There was some discussion on the potential sale of the property to an abutting farm which would include a charitable contribution. Mr. Lemont expressed concern regarding the CRMC regulations being used to increase the value of the property but motioned for the approval of the application as submitted. Mr. deRamel seconded the motion. Motion carried on a unanimous voice vote.

2008-01-075 JAMES AND REBECCA DURKIN -- Demolish an existing residence that is serviced by the public water supply and by a cesspool; and, construct a 4 bedroom replacement dwelling that is to be serviced by the public water supply and by a denitrifying OWTS; installation of a new driveway and a stormwater infiltration system. Located at plat Y-1, lots 111, 112, 113; 36 Cedar Island Road, Narragansett, RI.

James and Rebecca Durkin were present as well as their attorney, John Garrahy, Esq., their engineer Kevin Morin, PE of DiPrete Engineering, their environmental consultant, Scott Rabideau of Natural Resource Services, and Kerry Anderson, construction and building code consultant. Mr. Medeiros gave brief overview to the Council regarding the project proposal explaining that the applicant was requesting the issuance of a buffer and setback variance and that as designed the CRMC staff offered a recommendation of denial as they felt that the project could be redesigned to meet the RICRMP buffer and setback standards while still affording the applicant an expanded dwelling on the property. Mr. Fugate explained to the Council that the CRMC offered Mr. Durkin several options such as expansion of dwelling up to 49% and keeping in current location but the applicant chose to do otherwise. Mr. Fugate stated that CRMC staff would have recommended approval if the owner had considered setting the structure back enough to meet the setback standards as the lot configuration is such that they could accommodate the repositioning of the house.

Mr. Garrahy informed the Council of his witnesses and their line of testimony showing that the property is unique and that the existing structure on the property is unique. Mr. Garrahy stated that the Durkin property had constraints which prevented them from meeting certain requirements. Mr. Garrahy submitted for exhibit a

chart containing the information showing how it would not be possible for the dwelling to be positioned on the property so that it would meet setback requirements. Mr. Garrahy explained that he disagreed with the staff's interpretation of the CRMC regulations which excluded the cantilevered overhang footage in the calculation of the structural footprint. Mr. Garrahy explained that if the roof overhang was permitted in the calculations the applicant would be able to expand the existing structure significantly without the buffer regulations being involved. Mr. Garrahy explained the to the Council that the property is located on top of a slope and that flood zones needed to be considered in the positioning of the dwelling on the property, and these flood zones are the reason for the hardship. Mr. Medeiros explained the applicant had requested a preliminary determination in 2005 and the CRMC staff report was clear that the roof overhand would not be used in the structural lot coverage. Mr. Garrahy addressed that issue by defining the term structural lot coverage as being calculated in square feet and either equal to the total square footage occupied by one or more foundation, or in the case of cantilevered structures, which this is, the total square foot occupied by the structure and calculated as if a foundation supported the cantilevered portions of the structure. Mr. Garrahy suggested that the Council was narrowly construing the definition of structural lot coverage. Mr. Medeiros explained to the Council that the house has large eaves not cantilevered, habitable space. Mr. Fugate explained the roof structures that were not taken into account so as to not penalize applicants who would be able to meet the setback provisions.

Kevin Morin, PE, DiPrete Engineering, was sworn in and identified himself for the record. Mr. Morin's resume was submitted and marked as Durkin Number 1. Mr. Garrahy questioned Mr. Morin on his qualifications. Mr. Coia motioned, seconded by Mr. deRamel, to qualify Mr. Morin. Motion carried on unanimous voice vote. Mr. Morin's resume was marked as Durkin Number 1 Full. Mr. Morin explained a plan titled "Existing Site" that was marked as Durkin Exhibit 2 Full. Mr. Morin gave a brief explanation of the existing property conditions stating that it is one of the larger properties in the area and is zoned R20 by the Town. Mr. Morin stated that the lowest part of the property was located along the water with an elevation of 5.5 and that the property rose becoming elevation 10 beyond the existing dwelling. Mr. Morin confirmed that the flood plain was designated as AE (100-year) and the higher area was designated at flood plain X (500-year). Mr. Morin testified that floodplain in Pt Judith Pond goes from an AE elevation 10 to a V zone, elevation 1 but does not affect the property. Mr. Morin identified Exhibit 2 and Exhibit 3 for identification in which both were marked Full. Mr. Morin explained that Exhibit 3, Durkin Number 3 full, was referred to as an aerial study plan compiled of existing information. Mr. Morin explained Durkin Number 4 showed the FEMA and FIRM panel for the area – marked as full. Discussion on maps and direction of maps. Mr. Morin stated that the map's importance is the reference to the various floodplains. Mr. Morin identified Durkin Number 5 which is an enlarged view of Durkin Number 4 with the site located in the center of the plan again showing the flood plain designations – Durkin Number 5 marked as full. Mr. Durkin identified Durkin Number 6 stating that the map had been obtained from the Narragansett GI system which he enlarged and was not to scale and that the map portrayed the different flood zones for the area and property. Mr. Durkin explained the building standards for the areas out of the flood plain as well as the requirement for flood insurance in an A zone – Durkin Number 6 marked as full. Mr. Morin briefly explained Durkin Number 7 stating that the plan was the site plan with the flood plain highlighted. Mr. Morin identified the 100' foot buffer requirement which would be within the Town of Narragansett's front yard setback requirement – Durkin Number 7 marked as full. Mr. Morin confirmed that by including the roof in the calculations the new dwelling would be classified as under a 50% expansion and the setback would only be 50 feet. Mr. Medeiros stated that staff applied the same rules to Mr. Durkin's property as they had in any other house in the neighborhood but that Mr. Durkin's project is a demolition of the existing with a dwelling expansion. Mr. Medeiros explained that he had created a table for the staff report showing different options that could have been chosen. Mr. Medeiros also stated that he drew a sketch for the staff report showing a foundation that could be put on the property without triggering a buffer requirement. Mr. Morin identified Durkin Number 8 as the CRMC proposed plan showing Mr. Medeiros' recommendation of a 69 x 24 footprint with the highlighted floodplain designation. Mr. Morin confirmed that the structure would still require a variance and would be in an AE flood zone. Mr. Medeiros clarified that the sketch was drawn to give a depiction to the Council showing reasonable use of the lot and that by the CRMC program, flood zones can be built in – Durkin Number 8 marked as full. Mr. Morin confirmed that he submitted on the Preliminary Determination a footprint of 1668 sf. and that he surveyed the lot using the footprint and roof overhang which he believed to be in compliance with Section 300 of the RICRMP.

Mr. Garrahy introduced pictures into the record which were identified by Scott Rabideau and Rebecca Durkin. Mr. Rabideau and Mrs. Durkin were sworn in and identified themselves for the record.

Mr. Rabideau identified photograph marked as Durkin Exhibit Number 9 as being a photograph he had taken in October of 2012 of the Durkin house with the cantilevered roof overhanging the porch – Durkin Number 9 marked as full. Mrs. Durkin identified photos for the record marked as Durkin Number 10 through 11. Mrs. Durkin explained the photos as accurate depictions of their property taken in March of 2010 showing the flooding from the major storm event. Mrs. Durkin testified that the photos showed flooding in the lower section of the property but that the higher elevation of the property did not flood. Exhibits Durkin 9-11 were marked as full.

Mr. Anderson was called to testify as a private consultant on RI building code. Mr. Anderson stated that he had 20 years of experience in the building field and that he had been the Building Official for the City of Cranston and the City of Providence. Mr. Anderson stated that he was an ICC certified building official. Mr. Anderson's resume was marked at Durkin Number 12. Mr. Anderson testified that he reviewed the application materials and gave an overview of the current dwelling explaining in detail the construction of the cantilevered overhang. Several members of the Council expressed their concern that the witness was straying from his area of expertise. Mr. Anderson testified that the cantilevered roof overhang should be included in the dwelling structural lot coverage as it is supported by the foundation. Mr. Anderson explained the building codes for building in an AE flood zone stating that buildings constructed in an AE flood zone had to be built at design flood elevation and cannot be habitable space. Mr. Anderson stated that the non-habitable basement space would impose a hardship on the owner as building in an AE flood zone would require a complete redesign of the structure and is particular to this site. Mr. Anderson stated that the repositioning of the structure on the lot would cause a hardship due to the setback requirement for Narragansett requiring a Town setback variance. Mr. Fugate asked Mr. Anderson to explain the flood plain requirements for an X zone. Mr. Anderson confirmed that a foundation could be built in an X zone without floodplain requirements. Mr. Affigne asked about filling on the lot in the flood area. Mr. Anderson questioned the filling and whether it would create another issue elsewhere. Mr. Medeiros stated that filling is allowed in the A zone without 8' structural support and is done commonly in the coastal zone. Mr. Affigne suggests filling with the tweaking of the house design.

Mr. Hudner spoke to the application procedure stating that the roof overhang was the real question and whether or not a precedent would be set if approved for denied.

Mr. Rabideau was called to testify and was qualified by the Council as a wetland biologist. Mr. Rabideau's resume was submitted as Durkin Number 13. Mr. Rabideau explains, from a consultant's point of view, the process for submitting an application to the Council with calculation for structural lot coverage. Mr. Rabideau testified that the project will have no impact to the Type 2 waters nor the armored bank; and, that the property is 100% developed as a recreational yard – no current buffer zone on the property. Mr. Rabideau testified that there would be no significant adverse environmental impact to the coastal zone as the house exists and will be built in the same location. Mr. Rabideau also testified that the neighboring area was a very dense residential development. Mr. Rabideau testified to the fact that the applicant required the relief to the setback to keep the house out of the 100-year flood plain.

Mr. Garrahy asked to call Mr. George Daglieri to testify how not allowing the Durkin's to build will be a taking or diminish the value of the property. Mr. Goldman stated that the issues of diminution in value of the property and whether or not the Council's denial of application will result in a taking of the property is something for the Supreme Court to consider – discussion on proceedings for a taking case. Mr. Garrahy made an offer of proof for the witness, Mr. Daglieri, stating that the value of the property would decrease because the owner would have to get flood insurance which is expensive. Mr. Daglieri's qualifications were marked as Durkin Number 14 for identification only.

Mr. Durkin was sworn in and identified himself for the record. Mr. Durkin spoke about his dealing with the Director of the Department of Public Works, David Osterhout who wrote a letter to Mr. Durkin (letter marked at Durkin Number 15 – full) stating that the road in front of the property is subject to frequent flooding and that

building a structure in the flood zone adjacent to this road will exacerbate the flooding situation. Mr. Osterhout's letter continued to say the flooding situation could be avoided by constructing dwelling outside of the special flood hazard overlay district.

Mr. Garrahy made a closing statement saying that the Durkin property is an unusual piece of property and that all standards had been met. Mr. Garrahy asserted that the cantilevered roof was supported by the foundation and that with a broad interpretation of the regulations, the roof should be considered in the calculations for the structural square footage. Mr. Garrahy expressed how unique the lot was and asked for an approval of the variance.

Mr. Fugate stated that CRMC policy is that roof lines were not part of cantilevered structures. Mr. Fugate stated that CRMC defined the footprint as the square footage of the ground floor encompassed by structural foundation which has always been interpreted as the foundation itself or elements that are supported by a foundation, such as porches. Mr. Fugate confirmed that the roof had always been interpreted as a roof overhang. Mr. Fugate confirmed that the CRMC does allow filling in the A zone and that filling the area would bring the structure out of the flood zone as was indicated to Mr. Durkin. Mr. Fugate reiterated that the applicant has the choice on where they put the home, on whether they choose to fill the lot, on the size of the structure – all these factors can be modified at the applicant's choosing and if they chose not to modify the application as advised, it cannot be deemed a hardship because they won't meet the CRMC requirements.

Mr. Medeiros concurs with Mr. Fugate, and stated that the CRMC staff had met with the applicants and their consultants from the very beginning stages and tried to offer many solutions but the applicant wanted to submit what they submitted. Mr. Medeiros stated that there were compromises that could be made to meet the programmatic requirements. Mr. Medeiros confirmed that when the application first came in, CRMC staff measured for the structural lot coverage by going around the habitable walls of the structure. Mr. Medeiros confirmed that the deck and overhang was not considered a covered porch.

Mr. Reis stated that eaves are not included in the pre-project condition. Mr. Reis also reiterated that the applicant had been through the preliminary determination process and was aware of how CRMC would be handling the application.

Mr. Affigne asked for clarification on stormwater runoff from roofs and how that is calculated. Mr. Gagnon confirmed that the entire impervious structure is used in the calculation. Mr. Medeiros confirmed that this was the only instance where the entire roof is used to calculate dimensions for setback.

Mr. Affigne motioned for denial of the application based on consistency with previous decisions and applicant's knowledge of reasonable alternatives from staff which could make the property very attractive. The motion was seconded by Vice Chair Lemont.

Chair Livingston stated that she agreed with the motion for denial as she does not believe the roof overhang should be considered cantilevered living space. Chair Livingston stated that consistency with staff procedure was important. Chair Livingston stated that the alternatives offered to the applicant such as filling were viable solutions.

Council discussion on applicant's option based on denial decision such as submitting an application that meets RICRMP standards.

Mr. Gomez agreed that Grover and staff had made a good case providing options to the applicant and supports the Chair's position.

Motion to deny carried on a unanimous voice vote.

7. CATEGORY “A” LIST/ ENFORCEMENT REPORT

None were held.

8. ADJOURN

Vice Chair Lemont motioned, seconded by Mr. Affigne, for the meeting to be adjourned at 8:55 p.m.

Respectfully submitted,
Lisa A. Turner, Recording Secretary