

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, January 28, 2014 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
Ronald Gagnon, RIDEM
Raymond Coia
Donald Gomez
Tony Affigne
Jerry Sahagian
Joy Montanaro

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David Reis, Spv Environmental Scientist
Janet Freedman, Coastal Geologist

Brian A. Goldman, Esq.

Members Excused

Michael Hudner

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, for the approval of the minutes of the previous meeting. Motion carried on a unanimous voice vote.

3. SUBCOMMITTEE REPORTS

None

4. STAFF REPORTS

Mr. Fugate reported to the Council on the following issue:

- Deepwater Wind LLC public hearings scheduled for Tuesday February 4th and Monday February 24th with the finalized staff reports were completed and delivered on Friday, January 25th. The reports are also posted on the website.

Mr. Willis reported to the Council on the CRMC Agency Budget Analysis Update:

- Requesting two engineering positions that we lost which will require CRMC to generate new state money; possibly through fee increases. CRMC is also trying to find new revenue sources such as submerged lands leasing fees or increased cad cell dredge disposal fees (sporadic increase).
- Beach SAMP part of the capital budget but was not included on the list. Mr. Fugate stated that the Governor's Office was looking into the omission.

Mr. Goldman updated the Council on the Champlin's Appeal Litigation.

5. APPLICATIONS WHICH HAVE BEEN OUT TO 30 DAY NOTICE AND ARE BEFORE THE FULL COUNCIL FOR DECISION:

2013-05-132 IDA LEWIS YACHT CLUB – Construct and maintain: A floating dock extension to extend 40 seaward terminating in a “T” head having dimensions of 70’ long by 8’ wide. The Marina Perimeter Limit (MPL) will be extended to encompass the extended facility which will provide 4 additional boat slips for a total marina vessel count of 46 (42 existing + 4 new = 46). Located at plat 42; lots 11, 12, and 13; 170 Wellington Avenue, Newport, RI.

Mr. Reis gave brief overview of the application to the Council stating that the expansion of the MPL required Council approval. Mr. Reis stated that the application met all the standards in the program except for the parking standard which was a minor issue. Mr. Reis explained that there were no objections from the public and no staff objections with a staff recommendation of approval.

Turner Scott, Esq. put himself on the record as representing the Ida Lewis Yacht Club.

Mr. Coia motioned, seconded by Mr. Sahagian, for approval of the application. Motion carried on a unanimous voice vote.

2009-09-100 CAROL AND PAUL MERCURIO – Construct and maintain a 20’ x 32’ single family dwelling, to be served by municipal water and sewer service, and permeable pavement driveway. The dwelling is proposed to be 8.2’ landward of the bluff crest, requiring a 41.8’ setback variance (84%) from RICRMP Section 140/150 (50’ setback). Located at plat L, lot 178; Glenwood Avenue, Narragansett, RI.

Jerry Sahagian was excused from the meeting.

Mr. Reis gave a brief overview of the application stating the applicant was requesting to build a 20’ x 32’ dwelling with town water and sewer connection and a permeable driveway. Mr. Reis stated that addendums to the staff reports were recently written regarding the applicant’s geologist testimony and one to address the revetment which received a permit during the application process for the dwelling. Mr. Reis explained the substantial variance requests stating that the applicant is proposed a 0-5 foot buffer where a 25’ buffer is required and an 8’ setback is proposed where a 50’ setback is required. Mr. Reis stated explained that due to the extent of the variances and other concerns, staff recommended denial of the application. Mr. Reis explained to Chair Livingston that the real issue is the setback and the proximity of the dwelling to the shoreline which is proposed to be constructed 8’ from the coastal feature. Mr. Reis explained that the property was located in a V-zone and that the shoreline had been impacted from erosion and storms. Mr. Reis explained that because the dwelling was proposed to be built so close to the coastal feature, very little room is left for a buffer zone

Attorney Joseph DeAngelis and Attorney Kristen Sherman were present to represent the applicants. Also present was Paul and Carol Mercurio, as well as Tina Mercurio, Mr. Mercurio’s mother, who is a long time resident of the neighborhood. Mr. DeAngelis stated that through the construction of revetments in the 1990s, erosion has been stable for a period approaching 20 years. Also present for the applicant was David Carchedi, PhD in engineering and Peter Rosen, Phd in Geology. Mr. DeAngelis stated that with the development of the property through the dwelling construction and updated revetment construction, there would be more protection of the surrounding properties than if staff recommendations were followed and nothing was built on site. Mr. DeAngelis stated that the permit for the reconstruction of the revetment was

ted to the Council approval of the construction of the dwelling. Mr. DeAngelis stated that with the current standards, the house, if allowed to be built, would far surpass any other along the shoreline and would be the last house standing. Mr. DeAngelis stated that the proposal meets all standards except for the second variance criteria. Mr. DeAngelis explained that it was a small house on a small lot and that Mr. Mercurio went all the way to superior court to obtain a 60% variance from the front yard setback from the Zoning Board of Narragansett to be able to submit to CRMC for approval.

Mr. Mercurio was sworn in and identified himself for the record as Paul Mercurio confirming that he had lived in the neighborhood since 1972 and became a property owner in 1997. Mr. Mercurio confirmed that a permit was obtained in 1991 after Hurricane Bob for a stone revetment in front of Tina Mercurio's house which has protected the property such that there has been no significant erosion, even after Super Storm Sandy. Discussion on the Durkin lot and construction of a CRMC approved revetment; aerial photograph used.

David Carchedi, PhD was sworn in, identified himself for the record and was qualified as an expert witness as being a Professional Engineer with a specialty in marine-related areas.

Mr. DeAngelis questioned Mr. Carchedi regarding his role in the application submittal. Mr. Carchedi stated that his firm GZA Engineering had been contracted to put together a proposal to maintain the existing revetment and bring it to current standards. Mr. Carchedi stated that there had been a revetment on the property previously as seen in historical photos and remnant materials on shoreline. Mr. Carchedi explained the procedure for the maintenance of the current revetment. Mr. Carchedi testified that if approved the newly maintained revetment will be beneficial and protect the property from any wave action the site will see. Mr. Carchedi stated that the height of the revetment which matches the coastal bank was based on his interaction with CRMC staff and CRMP standards. Mr. Carchedi testified that the proposed dwelling which would be built on pilings was properly designed according to current FEMA standards calling for elevation in a V-zone. Mr. Carchedi testified that he believed the buffer and front yard setback being requested is the minimum necessary to construct the residence. Mr. Carchedi testified, based on his education, experience and scientific certainty that the construction of a single-family dwelling will not result in significant adverse environmental impact or use conflicts and that the proposed application is in conformity with the applicable goals and policies as set forth in CRMP Sections 2 and 3. Mr. Carchedi also testified that the revetment will have positive effect on the property and surrounding properties.

Mr. Fugate questions Mr. Carchedi regarding the revetment and whether there would be overtopping in a storm event. Mr. Carchedi confirmed that in a major storm event if there was overtopping of the revetment with erosion behind, it could topple the revetment. Mr. Fugate asked Mr. Carchedi about the dwelling safety in a storm event such as the 1938 hurricane. Mr. Carchedi testified that some of the houses in the neighborhood were older than the 1938 hurricane and they remain standing so that with the proposed dwelling being built to today's FEMA standards, it would be challenged but he believed it would stand the test.

Chair Livingston asked if the house was built to FEMA standards would they be able to get flood insurance. Mr. Carchedi assured that they would.

Vice Chair Lemont voiced his concern regarding the safety of permitting a house on the property. Mr. Carchedi replied that it was his professional opinion that the house would withstand a storm as great as the 1938 storm event.

Mr. Fugate spoke about the FEMA regulations based on recent storm events in Texas and that the CRMC was challenging the FEMA flood maps; the agency has no confidence in the FEMA flood maps as depicted at this point; and that they are the most challenged maps of any in the country because they are based on 1970 methodology.

Mr. Reis was assured by Mr. Carchedi that the revetment would be able to withstand, once overtopped, a storm event such as the 1938 Hurricane. When asked about the Durkin property damage from Super Storm Sandy by Mr. Reis, Mr. Carchedi testified with certainty that their revetment was not well designed and did not meet the current ACOE standards. Mr. Reis countered that the Durkin revetment was approved by CRMC in 1996 and the plans were prepared by a Professional Engineer. Dr. Carchedi maintained that his revetment design would withstand a storm event.

Mr. Fugate spoke about sea level rise in the region and stated that NOAA had predicted a 3-5 foot raise in sea level which could be approached as close as 2050 and expressed his concern that the house was designed to be only 1' of freeboard above BFE. Dr. Carchedi acknowledged Mr. Fugate's concern and suggested that they elevate to 2' above BFE pending local approval.

Mr. Reis expressed concern that if the revetment gets overtopped as seen in many coastal areas, the structure could and in many cases has ended up being on the coastal feature. Mr. Reis explained that the CRMC regulations do not allow for reclaiming of land after a major storm. Dr. Carchedi countered that after Super Storm Sandy there were hundreds of emergency assents that were issued to do just that, with more than half of them being repairs to revetments. Mr. Reis countered that many of the revetments had been designed by Professional Engineers and were not supposed to fail but did and Super Storm Sandy was not even categorized as a hurricane.

Mr. Gomez asked about the termination of the revetment at the ends of the lot. Dr. Carchedi stated that they will tie into an existing revetment on one side and on the other side it will wrap around to meet the existing grade. Matthew Page of GZA who helped design the revetment was sworn in and identified himself for the record. Mr. Page stated that the size of the boulders being used was W50 for average size and medium size would be about 4,000 pounds which is larger than shown on the beach in photos which the largest would range up to 16,000 pounds.

Dr. Peter Rosen was sworn in, identified himself for the record and was qualified as an expert witness in coastal geology, shoreline accretion and erosion processes. Dr. Rosen's report was then marked as Mercurio #1 Full by Mr. Goldman. Dr. Rosen stated that in order to prepare his report for the Mercurio's he visited the site several times looking at the geology on the site, researched using aerial photographs to determine the erosional history of the site and reviewed the proposed site project. Dr. Rosen stated that the existing revetment was in fair condition and was preventing shoreline erosion, but could be improved upon using current standards. Dr. Rosen testified that the shoreline has been stable since 1995 due to the revetment in place along with adjoining lot protection and that the newly proposed revetment would be beneficial not only to the Mercurio's but to the municipal amenities as well. Dr. Rosen stated that the 5 foot vegetated buffer would add more protection to the property with the dismissive impact on waves and flooding. Dr. Rosen testified that the house would not contribute to debris situation in the event of a major storm event and he explained that channelization would be minimal on the lot as the pilings were only 12" in diameter. Dr. Rosen spoke in general terms about the impact from severe storms based on water level and wind velocity. Dr. Rosen finished his testimony by stating that the proposal which links the construction of the house, the vegetative buffer and the seawall will not have any significant adverse impacts and may have a small positive impact.

Dr. Rosen, answering Mr. Fugate's inquiries, stated that he was unaware of the storm conditions in Westerly during Super Storm Sandy. Mr. Fugate suggested that the lot could still benefit from the reconstructed revetment without the construction of a house and with the planting of a vegetative buffer.

Ms. Freedman asked Dr. Rosen what would happen in the area closest to the dwelling where there is no proposed buffer to dampen wave energy from topping the revetment. Dr. Rosen stated that the house would be built above the highest wave energy and that the house should never be hit with waves. Dr. Rosen explained the wave action as demonstrated on the new FEMA maps. Ms. Freedman expressed concern regarding current FEMA flood maps. Dr. Rosen expressed that the owner was willing to elevate higher than the new FEMA standards. Mr. Fugate and Dr. Rosen discussed FEMA standards regarding erosion and why Dr. Rosen feels it is important to prevent erosion and create stabilization in the area.

Mr. Reis reiterated that the CRMC's primary tool is setbacks and buffer zones and the only way to prevent loss of dwelling is to get structures further back on the property.

Mr. Mercurio was recalled by Mr. DeAngelis and testified that the revetment project approved by CRMC for Mr. Durkin was not built, nor tied properly into Tina Mercurio's property.

Mr. DeAngelis also stated that if the revetment assent was released from the house permit, there was not reason to rebuild revetment if not for the house.

Rodney LeBrecque and Carol Wilson of neighboring properties were sworn in and identified themselves for the record; and both voiced their objections to the project based on unknown during storm events. Mr. LeBrecque submitted photographs marked as LeBrecque A and explained that they were taken in October 2013. Ms. Wilson submitted pictures as well which were marked Wilson B and Mercurio 2. Ms. Wilson asked the Council to follow their regulations and explained that her objection was her concern for erosion on such a small lot. It was determined that both Mr. LeBrecque and Ms. Wilson live directly behind the Mercurio lot and their view would be affected by a house being built.

Mr. DeAngelis made a brief summation and asked the members to weigh and consider the qualifications of the witnesses' testimony and the FEMA standards. Mr. DeAngelis stated that if the Council were to reject the application the Mercurio's would have not other course of action except to pursue a takings case with the State of Rhode Island. Mr. DeAngelis reminded the Council of the Ganz application and asked for consistency in their decision making.

Mr. Coia motioned to approve the application with the recommendation or stipulation that applicant agreed to raising the house from 1' above BFE to 2' above BFE. Mr. Coia stating that he was making the motion based on scientific evidence brought before the Council and that there was no contradictory evidence brought forth. Mr. Coia stated that he afforded all due weight to staff recommendations. Mr. Gomez seconded the motion stating that all parties did an excellent job in presenting their cases but he does not like to deny anyone the use of their property and the project fits into the community as the community exists. Mr. Gomez explained that it seemed reasonable in this case to strengthen shoreline and added that he felt a stipulation should be added that no further accessory buildings be allowed on the site.

Chair Livingston stated that she would be voting against the application as it was extremely contrary to CRMC's reasonable regulations, setback requirements and variances which were put into place to protect the shoreline and other parts of neighborhood. Chair Livingston expressed that she felt the CRMC staff were at least as expert in this situation and that she could not support anything but a denial of the proposed application.

Vice Chair Lemont stated that he was in agreement with Chair Livingston and that he could not support an application in light of what happened after Super Storm Sandy where this could be one more potential situation where someone would be in asking for permission to build a home due to storm event loss.

Mr. Affigne stated that after listening very carefully he was persuaded that the issue was not about the revetment and whether it could be built but whether it should be built. Mr. Affigne expressed his opinion that CRMC should be concerned with setbacks and buffers and he was inclined to vote against the motion although he did not want to decline the owner the use of their property.

Mr. Gagnon stated that the Council had already approved a revetment based on a house being built on the property so we should have expected an application to be submitted. Mr. Gagnon stated that the revetment will improve the condition of the other properties and that he was inclined to support the application and allow for the use of the property. Chair Livingston and Mr. Affigne asked for clarification of assent situation on property. Mr. Fugate clarified that there was a maintenance application issued for the revetment itself to repair the existing structure that is there which was applied for prior to Sandy. Mr. Fugate stated that the Council could uncouple the stipulation and allow the repair of the seawall without the need for a dwelling on the property.

Ms. Montanaro expressed her opinion stating that there would be no purpose for the expense of rebuilding the revetment if there was no possibility of building a house. Ms. Montanaro stated that she was in support of the application for just that reason. Mr. Fugate explained that there were other instances where the owners use their ocean front property and just park their cars to enjoy the day or set up an RV for a short period of time.

Mr. Gagnon stated that the applicant had done everything we normally ask and the project was consistent with other uses of properties in the area.

Chair Livingston disagreed stating that the applicant has done what they can but it is still a variance from our standards

Mr. Coia moved the question

Chair Livingston asked for a voice vote of the motion by Mr. Coia and seconded Mr. Gomez. Mr. Goldman clarified that the motion by Mr. Coia was to approve the application but raise the dwelling to 2' above BFE and Mr. Gomez asked for no accessory buildings on the lot. Both Mr. Coia and Mr. Gomez agreed. The motion carried on a 4 to 3 vote with Chair Livingston, Vice Chair Lemont and Mr. Affigne opposed.

10. ADJOURN

Vice Chair Lemont, motioned, seconded by Mr. Coia for the meeting to be adjourned at 8:00 p.m.

Respectfully submitted,
Lisa A. Turner, Recording Secretary