

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, April 22, 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
Donald Gomez
Mike Hudner
Joy Montanaro
Tony Affigne
Jerry Sahagian

Staff Present

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

Members Excused

Raymond Coia

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. Gomez, for the approval of the meeting minutes from March 25, 2014. Motioned carried on a unanimous voice vote.

3. SUBCOMMITTEE REPORTS

Chair Livingston reported out the Subcommittee recommendation on the Deepwater Wind, LLC application stating that every member of the subcommittee has reviewed it, agreed to it, and signed it. Mr. Goldman stated that it would be officially released on Wednesday, April 23, 2014. It was decided the schedule the application to be heard before the Full Council on Tuesday, May 13th, 2014.

4. STAFF REPORTS

Mr. Fugate updated the Council on the following:

- CRMC participation in workshop and presentation given to FEMA on Floodplain Maps
- CRMC participation along with Curt Spalding from EPA, Janet Quade from DEM, and Art Handy from the House Environmental Committee focusing on Climate Change.
- CRMC participation in a Northeast Regional Ocean Council meeting on regulatory efficiencies pertaining to dovetailing State and Federal processes cutting down on redundancy and streamline the process.
- The first Technical Review panel under the Experimental Shoreline Protection Regulations was held and reviewed and application. CRMC staff will meet with applicant to discuss the technology requested.
- In the upcoming week, a meeting will be held between CRMC, ACOE, and Harvard regarding better engineering of the shoreline to withstand Sandy-like events.

- Mr. Fugate will be attending a meeting in the up coming week with the Regional Director of FEMA to discuss flood maps that have recently been adopted by FEMA and RI's plans on adopting flood maps using modeling methodology that was gained through ACOE.
- Mr. Fugate stated that the CRMC had applied for \$200,000.00, as part of the Beach SAMP under the coastal zone management funds, as was awarded from NOAA, CRMC will be getting partial funding of 193,090.23. Mr. Fugate reminded the Council that the stated budget awarded CRMC \$300,000.00 for the Beach SAMP project; all totaling about \$700,000.00; with a total budget of needed \$2.3 million.

5. Coastal Education Series – Grover J. Fugate, CRMC Executive Director; Shoreline Change (Beach) SAMP Presentation

(Short break taken)

6. Administrative Application before the Full Council for Decision:

2014-02-006 MARYANN ALUZZO – Construct and maintain three canti-levered decks onto existing dwelling. Located at plat 173, lots 7 and 7A; Breen Road, Westerly, RI.

Mr. Reis gave a description of the project and its history to the Council stating that the application had been before the Council at a prior hearing for a declaratory ruling on the CRMC regulations for canti-levered decks. Mr. Reis stated that a prior assent was granted to the previous owner for the construction of a 24 x 24 foot footprint with an 8' x 12' porch. Mr. Reis explained that in the granting of the previous permit, a 96% variance to their buffer and a 60% variance to their setback were granted. The previous owner agreed to put a tract of land in a conservation easement as compensation for the large percentage of variances that were granted. Mr. Reis stated that the new owners of the property, Mr. and Mrs. Aluzzo, are requesting an expansion of the dwelling by adding cantilevered decks on three sides of the dwelling.

Jamie and MaryAnn Aluzzo were both present and represented by legal Counsel, Joseph DeAngelis, who had two witnesses: Scott Rabideau, environmental consultant and Lori Joyal, real estate agent. Mr. DeAngelis recognized that the Council had made a declaratory ruling but at that hearing it was advised that the applicant seek approval of the Council for the canti-levered decks and balconies. Mr. DeAngelis reviewed the circumstances of the Assent with the Council. Mrs. Aluzzo was sworn in and identified herself for the record. Mrs. Aluzzo testified that they were asking only for the balcony on the west side of the dwelling so that the new owners can use the balcony area to appreciate the surrounding natural habitat. Mr. Aluzzo was sworn in and identified himself for the record. Mr. Aluzzo explained that the deck supports on the west side of the dwelling, if approved, would be 45.5 inches but could be safely cut back to 42 if necessary, making the deck 42.5 inches in width. Mr. DeAngelis tried to make a correlation between the deck and the overhang stating that the overhang was 26" and the deck was 42.5 inches making the request for additional 16.5 inches more than the roof overhang. Mr. Aluzzo testified that even though the balcony would not be enough to recreate on, it would be nice to afford the owners somewhere to sit and enjoy the outdoors. Mr. Aluzzo summarized for the Council all the extras he added to the house to make it appealing to buyers with the lack of indoor and outdoor living areas.

Mr. Rabideau was sworn in and identified himself for the record. The Council agreed that he was qualified as an expert witness in his chosen field of wetland biologist. Mr. Rabideau explained the conservation easement to the Council stating that it entailed 1.02 acres of land including the coastal

buffer zone that was not affected by the original variance. Mr. Rabideau testified that it was entered into in the negation process of the original approval to give up further rights to work in any of the upland buffer zones that remained on the property. Mr. Rabideau testified that CRMC regulations, specifically section 140.B.2, excluded associated structures from the setback requirements. Mr. Rabideau stated that in a most circumstances a deck on a house in a setback is normally granted administratively. Mr. Reis and Mr. Rabideau discuss the regulation and its intent but are not in agreement. Mr. Affigne pointed out that the owners were in violation of the previous permit and CRMC regulations and were requesting approval of structures after the fact. Mr. DeAngelis countered that a Consent Agreement had been entered into and that the violations were cleared up with the exception of the balconies which the Consent Agreement articulated could be applied for. Mr. DeAngelis clarified that the applicant's were in front of the Council for an approval of the balconies, requesting a variance. Chair Livingston stated that the applicant could not meet the criteria for #6 (economic reasons). Mr. Rabideau testified that to all the variance criteria stating that the applicant built the home in accordance to CRMC assent, that the lot is fairly small after the conservation easement took effect, and that there was no way the applicant could construct a balcony without seeking a variance due to the 10' construction setback.

Real estate agent, Lori Joyal, was sworn in and identified herself for the record. Ms. Joyal testified that although they did find a buyer for the home, it was difficult and that the house had been on the market for almost two years. Ms. Joyal testified that, in her opinion, Mr. and Mrs. Aluzzo suffered and undue hardship because of the inability to sell the property without balconies. Mr. Affigne questioned Ms. Joyal about the new buyer's willingness to purchase the property without the three decks. Ms. Joyal stated that the house was being appraised for the purchase as the bank thought the balcony would add to the value of the dwelling. There was discussion on the size and position of the decks allowed on the house between Mr. Affigne and Mr. Aluzzo as well as the status of the violation that occurred on the property involving the cutting of trees. Mr. Reis stated that the trees that were cut were wetland trees and protected by the conservation easement. Mr. Reis explained that pruning would have been allowed to keep the house safe from branches, which is where the setback comes in so that when vegetation grows in a protected area it is far enough away from the house that it does not interfere. Mr. Reis also stated that even though the violation of cutting the trees was resolved, there is no way to replace trees that have been topped in a wetland.

Mr. Reis addressed the Council on his concerns regarding staff negotiations with applicants and his position as a supervisor to the biologists on staff. Mr. Reis explained again the history of the property and the involvement of CRMC staff member Tim Motte prior to construction of the dwelling where he saw drawings on the lot that were inconsistent with the negotiated agreement with the property owners.

Mr. DeAngelis called Ms. Joyal a second time to which she testified that the lot plans that Mr. Motte testified to seeing could not possibly have been on the property because when she became the contracted real estate agent, she put her signs up and took theirs down. Ms. Aluzzo stated that there had not been a rendering on the house. Mr. Aluzzo testified again that he had not had any conversations with CRMC staff when construction began and that he did not recall a visit from CRMC staff until the end of October to which he immediately called his engineer Herb Arnold regarding the house design who suggested that Mr. Aluzzo get in touch with Scott Rabideau.

Mr. DeAngelis made his closing statement reiterating his belief that CRMC did not regulate cantilevered balconies.

Mr. Gomez motioned, seconded by Mr. Affigne, to deny the application. Mr. Gomez explained that the Council was being asked to grant the variances for reasons on economic gain which is not the Council's position, also, stating that CRMC had already granted more than should have been granted for the lot and should not compromise the environmental regulations further.

Chair Livingston agreed with Mr. Gomez that concessions were made originally and no more should be made. Chair Livingston also did not agree that there was an undue economic hardship.

Mr. Affigne stated that he was in favor of the motion to deny as the six variance criteria had not been met as well as disagreeing with the undue economic hardship.

Mr. Sahagian differed in his opinion and stated he was opposed to the motion to deny as he did not feel the CRMC regulated canti-levered decks and that the deck was very similar in size to the roof overhangs.

Chair Livingston called for the vote.

The motion to deny carried on a seven to one vote with Mr. Sahagian opposed.

6. Executive Session

Mr. Hudner motioned, seconded by Vice Chair Lemont, to adjourn. Motion carried. Meeting adjourned at 8:05 p.m.

Respectfully submitted,
Lisa A. Turner, Recording Secretary