

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, September 8, 2015 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
Ron Gagnon
Raymond Coia
Tony Affigne
Jerry Sahagian
Joy Montanaro
Don Gomez

Staff Present

Grover J. Fugate, Executive Director
Jeffrey Willis, Deputy Director
Richard Lucia, Spv Civil Engineer
Amy Silva, Sr. Civil Engineer

Brian Goldman, Legal Counsel

Members Excused

Paul Beaudette
Mike 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**

Chair Livingston called for approval of the minutes from the previous meeting.

Vice Chair Lemont motioned for the approval of the minutes from the August 25, 2015 Semimonthly meeting; seconded by Mr. Coia. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont read out the following program revisions that were approved by the Policy and Planning Subcommittee and presented to the Council for concurrence and to begin the rule making process in accordance to the Administrative Procedures Act: CRMC Management Procedures, Section 4.3 – Schedule of Fees amendment to provide for Section 320 review application fee.

4. **STAFF REPORTS**

Mr. Fugate informed the Council on the following:

- Beach SAMP Stakeholder meeting on 09-29-2015 at 5:30 p.m. at the Bay Campus where the movie “Shored Up” will be presented. “Shored Up” is a documentary about the New Jersey/New York experience with Hurricane Sandy. There will be a panel discussion after the movie.
- Marine Spatial Planning Conference on October 6, 2015 at GSO. There will be speakers from all over the world discussing ocean planning. The meeting is open to Council members. Please let Mr. Fugate know so he can reserve a place.
- Deepwater Wind has two barges working on site. The smaller barge will be switched out by Weeks as the heavy seas seemed too much for the barge. Weeks will provide a jackup rig by the middle of

the month of September. It is hopeful that this will bring them back on schedule. The CVA will be at the 09-22-2015 Semimonthly meeting to give an update. Mr. Fugate confirmed that there is a safety committee on each barge. Mr. Fugate confirmed that there was one safety standdown.

Mr. Goldman polled the members of the Council who were not present for the previous Bard meetings as to the reading of the entire administrative record. Mr. Goldman polled Ms. Montanaro, Mr. Sahagian, Mr. Gomez, Mr. Affigne and Chair Livingston. All members polled affirmed the reading of the record.

5. Applications which have been Out-To-Notice and are before the Full Council for Decision:

2008-11-062 MARK BARD – Continued from August 25, 2015 -- Pursuant of the Rhode Island Superior Court decision, the applicant is submitting the current application for a State of Rhode Island Assent to construct and maintain: a new 3 bedroom 24' x 62' dwelling (1,488 sq. ft.), with a 10' x 62' second floor cantilevered deck. Dwelling will be serviced by town water and a denitrifying OWTS (septic system). The project requires a 35' (70%) buffer zone variance, the required buffer zone is 50', proposed is 15'. Additionally, a 39.7' (53%) setback variance is required, the required setback is 75', proposed is 35.3'. Located at plat 12, lot 87; Clarkes Village Road, Jamestown, RI.

Mr. Affigne disclosed that he had visited the Bard site and that he did not speak to anyone at the site. Mr. Affigne stated that he had walked along the edge of the property and walked along the shoreline to examine the base of the bluff and brush line. Mr. Affigne talked about the condition of the coir logs which appeared to need maintenance due to deterioration. Mr. Affigne checked the location of the boring stakes, stating that they appeared closer to the berm than he had expected. Mr. Affigne confirmed that taking a site visit was very helpful and that the conditions of the property were much more challenging than what can be seen in the agenda packet.

Chair Livingston asked for a motion for discussion purposes. Mr. Sahagian motioned for approval of the application based on the fact that the hardship was not created by the applicant, the applicant sought relief from Town setback, the fill is not located where the dwelling will be located, and CRMC staff indicated they did not have objections to the approval of the application. Vice Chair Lemont seconded the motion to approve for the purpose of discussion.

Mr. Gagnon asked if procedurally the discussion needed to be on the variance criteria first. Mr. Goldman stated it can be discussed but the variance criteria was addressed in their submission and vetted by staff.

Vice Chair Lemont withdrew his second so that Mr. Sahagian could amend his motion to include the addition of the four staff stipulations in the approval motion. Vice Chair Lemont seconded the amended motion for discussion purposes.

Mr. Gomez, after confirming that he had read the entire record, stated that even though he concurred that the site was risky, he did not want to be in a position where they were denied the right to use the property stated that he was leaning toward being in favor of the motion.

Chair Livingston stated that she felt as though the variance criteria had not been met at all, and that, in her opinion, the original buffer and setback requirement of 75 ft which was adopted by CRMC long ago was for valid reasons. Chair Livingston referred to the Save The Bay letter, in which discussed the values of the setback requirements. Chair Livingston reaffirmed her opinion that variance criteria are

valid in this and all cases. Chair Livingston questioned the undue hardship aspect because the applicant knew when he bought the land there would be setback problems. Chair Livingston also stated that the size of the house was larger than what the lot can support and that CRMC is tasked with trying to minimize development of the coast for the benefit of everyone.

Mr. Gagnon countered with the fact that CRMC asked Mr. Bard to go back to the town to get relief on setback which he did, and that CRMC staff didn't disagree with variance criteria. Mr. Gagnon could not justify how the Council could say no, especially with the Judge's decision. Mr. Gagnon suggested that Policy and Planning subcommittee look into ways of changing variance criteria to prevent situations where houses can be built on substandard lots. Chair Livingston thought the circumstances were not the same between the Town's regulations and CRMC regulations.

Mr. Affigne stated that his concern was where the setback will be after a major storm event. Mr. Affigne stated that he did not believe the setback requirements have been met and could prove detrimental in this situation.

Mr. Gomez stated that the coir logs were designed to be replaced. Mr. Lucia confirmed that the coir logs degrade over time and do need to be maintained but that CRMC does like to see the natural vegetation take over. Mr. Lucia confirmed that the logs are temporary structures that are meant to be repaired but staff does not stipulate the repair process in the permits; it is up to the owner to protect their property.

Vice Chair Lemont stated that with the testimony given, the no objection recommendation from staff and the change from the Town of Jamestown, he could not find a reason to deny the application.

Mr. Affigne pointed out that one staff stipulation stated that the land owner would remove the development when bluff retreat reached the point where the structure was threatened, and asked if there were criteria in place to support this. Mr. Fugate stated that the staff needed to come up with the appropriate trigger point for following through with that stipulation.

Mr. Coia stated that looking at the totality of all the documentation before the Council from both the applicant and staff, both expert testimony and lay person testimony, he felt that the only course of action is to approve the application.

Vice Chair Lemont moved the question.

Chair Livingston asked for a vote. The motion was carried with 6 in affirmative and 2 in opposition, Mr. Affigne and Chair Livingston. The application was approved with all staff stipulations.

7. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Sahagian, to adjourn.
Motion carried on unanimous voice vote. Meeting adjourned at 6:38 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary