

# CRMC DECISION WORKSHEET

2021-02-051

Bruce Gardner & Charles A. Sweet  
Revocable Trust

Hearing Date:		
Approved as Recommended		
Approved w/additional Stipulations		
Approved but Modified		
Denied		Vote

APPLICATION INFORMATION						
File Number	Town	Project Location		Category	Special Exception	Variance
2021-02-051	Charlestown	Sea Lea Avenue		A	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Plat	9			
		<b>Owner Name and Address</b>				
Date Accepted	8/25/2021	Bruce Gardner & Charles A. Sweet Revocable Trust		Work at or Below MHW		<input type="checkbox"/>
Date Completed	10/19/2021	476 Main Street Wakefield, RI 02879		Lease Required		<input type="checkbox"/>

## PROJECT DESCRIPTION

Single Family Dwelling with OWTS utilizing a composting toilet and stormwater management

## KEY PROGRAMMATIC ISSUES

**Coastal Feature:** Coastal Pond backed by Coastal Bluff

**Water Type:** Type 2, Low Intensity Use/Green Hill Pond

**CRMP:** 1.1.6(E), 1.1.6(I), 1.1.7, 1.1.9, 1.1.10, 1.1.11, 1.2.1(C), 1.2.2(D), 1.3.1(C), 1.3.1(F), 1.3.4, 1.3.5

**SAMP:** Salt Pond SAMP

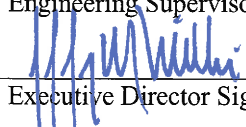
Variances and/or Special Exception Details: Variance for Earthwork within the 25' Construction Setback (1.1.9)

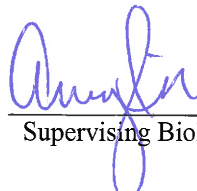
Additional Comments and/or Council Requirements: Applicant is making a legal argument against requesting relief from Town Setback to alleviate CRMC Variances.

Specific Staff Stipulations (beyond Standard stipulations): Should the Council approve the Assent, three recommended stipulations are included in the submitted staff report.

## STAFF RECOMMENDATION(S)

Engineer \_\_\_\_\_ Recommendation: \_\_\_\_\_  
 Biologist ALS Recommendation: Defer to Council on Legal Issue  
 Other Staff \_\_\_\_\_ Recommendation: \_\_\_\_\_

Engineering Supervisor Sign-Off \_\_\_\_\_ date \_\_\_\_\_  
 10/29/2021  
 Executive Director Sign-Off \_\_\_\_\_ date \_\_\_\_\_

 10/19/21 \_\_\_\_\_ date \_\_\_\_\_  
 Supervising Biologist Sign-off \_\_\_\_\_ date \_\_\_\_\_  
 Staff Sign off on Hearing Packet (Eng/Bio) AS 11/4/21 \_\_\_\_\_ date \_\_\_\_\_



STATE OF RHODE ISLAND  
COASTAL RESOURCES MANAGEMENT COUNCIL  
BIOLOGIST SIGN-OFF

TO: Jeffrey M. Willis  
DEPT: Executive Director, CRMC  
FROM: Amy Silva  
DEPT: CRMC PERMITTING SECTION  
SUBJECT: Category A Application

October 19, 2021

File Number: **2021-02-051**  
Applicant: **Bruce Gardner & Charles A. Sweet Revocable Trust**  
Location: **Sea Lea Avenue, Charlestown – Plat 9, lot 387**  
Water Type/Name: **Type 2 – Low Intensity Use – Green Hill Pond**  
Coastal Feature: **Coastal Pond backed by low (vegetated) coastal bluff**  
Project Description: **Single Family Dwelling with OWTS utilizing a composting toilet and stormwater management**

**Plans Reviewed:** “Plan of a Proposed Onsite Wastewater Treatment System...Lot 387 of Assessor’s Map 9...Charlestown RI..” dated July 26, 2016 and last revised 10-15-21 by Frisella- Balch & Associates and CJ Doyle PE.

**SITE HISTORY:**

2000-06-003: Preliminary Determination: Feasibility of constructing residential dwelling  
2014-07-094: Assent: Clear lot of debris & Brush, establish 25 foot Buffer Zone  
2016-12-031: Preliminary Determination: Feasibility of constructing residential dwelling  
16-0147: Notice of Violation: Lot cleared beyond limit of permit, no permanent markers  
(violation cleared 11/18/2016)  
19-0037: Complaint: Buffer Mowing (determined unfounded 5/20/2019)  
20-0254: Cease and Desist Order: Buffer Zone mown (violation cleared 12/20/2020)

**PROJECT DESCRIPTION:**

The application requests an Assent to construct a two bedroom dwelling with stormwater management, new OWTS utilizing a composting toilet and driveway on an undeveloped lot on Sea Lea Ave. As proposed, the OWTS is located two feet from the required 25’ Buffer Zone, requiring a Variance for earthwork within the CRMC Construction Setback (25’ beyond the Buffer/50’ from the Coastal Feature – Section 1.1.9). The dwelling structure itself is located outside the Setback. The proposed deck and OWTS fall within the Setback.

**APPLICATION HISTORY:**

The application was submitted on **February 10, 2021**. The application was reviewed for technical completeness and returned Deficient on **February 16, 2021** for lack of Variance for the OWTS within setback, lack of Coastal Hazards Application Worksheet (CHA), and lack of an OWTS permit.

The application was re-submitted on **March 18, 2021**, and was still technically incomplete - still missing the CHA Worksheet, the approved OWTS plan, the Variance for the OWTS and other items. The application also required an updated Building Official Form. Staff contacted the applicant’s design engineers via email requesting this information on **March 23, 2021** and noted that it “..looks like no revisions/minimal revisions

**CRMC File Number:** 2021-02-051

**Name:** Bruce Gardner & Charles A. Sweet Revocable Trust

Page 2

*were made between this {submission} and the deficiency*". This email asked if the applicant had asked for setback relief from the Town of Charlestown, as it appeared that the proposal was set at the standard Town setback. The application was not accepted for review, and was held awaiting the additional information.

On **April 6, 2021**, staff again emailed the applicant's design engineers looking for the information requested on March 23, and stating that the application would be returned Deficient soon (CRMC has a standard practice of holding new applications for 1-2 weeks if information can be sent quickly).

On **April 9**, the design engineer (Jeff Balch) replied stating that the design team was awaiting a determination from the Executive Director. Unbeknownst to staff, the applicant's attorney (Joe D'Angelis) had contacted the Executive Director on **March 30** challenging the staff's request for Town setback information and incorrectly portraying the request as a requirement

Mr. Willis replied to Mr. D'Angelis on the same day stating that part of the Variance Request requirements is requesting Town relief if relief can lessen/obviate the Variance. The email exchange between Mr. Willis and Mr. D'Angelis was forwarded to Mr. Balch requesting that the question of front setback relief be addressed within a Variance Request.

On **April 21, 2021**, staff emailed the design engineers as well as the attorney stating that no response to the March 23 information request had yet been received and the application could not sit much longer without being returned Deficient a second time.

On **April 30**, Mr. D'Angelis submitted a reply regarding the Town Setback relief. As this document contained legal case history, the document was forwarded to CRMC Legal Counsel for review on **May 5, 2021**.

On **May 5 2021**, the previously requested and still outstanding Coastal Hazards Application Worksheet and updated Building Official Form were received. The CHA was not complete and CRMC requested the missing page from Jeff Balch.

On **June 2, 2021**, after discussion with the Executive Director, staff emailed the design engineers and attorney stating that in order to obtain administrative review and likely a positive staff recommendation, the applicant must request relief from the Town to minimize the CRMC Variance. Staff further stated that if that request had not been made, the application would be returned to the applicant to make the request. On the same day, Mr. D'Angelis replied to the email stating that they would not go to the Town to request any front setback relief.

On **June 10, 2021**, staff emailed CRMC Attorney DeSisto asking for any updates on his discussion with Mr. D'Angelis.

On **August 13, 2021**, staff spoke with Mr. DeSisto, who updated staff stating that Mr. D'Angelis had asserted that a court order demonstrated that no relief request was necessary. Mr. DeSisto stated he would study the Court Order and get back to staff.

On **August 24, 2021**, Mr. DeSisto contacted staff and stated that the application could be accepted, as the argument was a legal one. Mr. DeSisto stated that he was prepared to discuss the legalities in front of the Council. The application was accepted on **August 25, 2021**.

On **September 14, 2021**, during review of the application and preparation of the report for Council, staff noted that the most recent plan set failed to depict the CRMC Buffer/Setback, erosion controls or proposed grading. Staff then reviewed the plans submitted in March with the deficiency response submittal. Those plans failed to show proposed grading and showed the path through the Buffer extending onto the Coastal Feature. Staff contacted the design engineers for a concise and complete plan set that depicts the path stopping at the feature, all CRMC Buffers/Setbacks as well as all proposed grading.

On **October 15, 2021**, revised plans were submitted which depict the Buffer Zone and path, as well as a statement from the design engineer that no grading changes are proposed.

**REVIEW COMMENTS:**

The application requests an Assent to construct a two bedroom dwelling with stormwater management, new OWTS and driveway on an undeveloped lot on Sea Lea Ave. As proposed, the OWTS is located within the construction setback – at its closed point, two feet from the required 25’ Buffer Zone, requiring a Variance for earthwork within the CRMC Construction Setback. It should be noted that while decks are not subject to setbacks, it is CRMC Standard practice to require decks to be at least 10 feet from a vegetated Buffer for safety reasons. The proposed stairs are less than 10 feet from the Buffer.

This project required a Coastal Hazards Analysis (CHA) as per the Rhode Island Coastal Resources Management Council’s regulations. The Council recommends residential applications meet a minimum of a 30 year design life (longer design life may not meet recommended criteria). Please be advised this project, which was designed for a 30 year design life:

- Meets rate of Sea Level Rise (SLR).
- N/A meet accelerated erosion rate.
- Does not meet the recommended StormTools Design Elevation (SDE) for three feet (3’) of SLR, the chosen design life scenario. The stated FFE is 14 feet. The SDE for this design life scenario is 19.9 feet.
- The applicant is advised that the CERI risk index for this area is “extreme” for the chosen design life scenario. Please see <http://www.beachsamp.org/stormtools/stormtools-coastal-environmental-risk-index-ceri/> for details on the CERI Risk Index

As proposed, the OWTS chambers are 2 feet away from the CRMC Required 25 foot Buffer Zone, and the Limit of Disturbance( LOD)/erosion control line touches the edge of the OWTS. Staff does not believe there is a way to install the OWTS without breaching the LOD/erosion control line, and is concerned that there is no way to install without disturbing the Buffer Zone as well. The submitted narrative/Variance (received on April 30, 2021) states that “*The limit of disturbance is consistent with the existing vegetated area such that minimal vegetation needs to be removed to install the septic tank*”. The LOD on the submitted plans does not depict any vegetation removal. Staff questioned the design engineers of this discrepancy on September 14, 2021. No answer has been supplied.

Staff requested the applicant address the location of the OWTS and if relief from the Town front Setback would allow for additional setback between the OWTS and the Buffer Zone. This was not addressed in the submitted narrative. The submitted narrative details how the applicant received relief from the DEM/OWTS Division as part of a Consent Order and upgrading a system offsite, which does not answer the question of front setback relief.

**COMMENTS ON VARIANCE:**

The applicant submitted a written project narrative with a Variance request in accordance with Section 1.1.7. Staff offers the following comments:

The narrative notes that the lots on either side of the subject property are considerably larger. While they are larger, they are wider and not necessarily much deeper/further away from the Coastal Feature. It should be noted however, that both houses pre-date permitting from CRMC (Lot 368 to the west – Built 1969; Lot 388 to the east – Built 1960) and neither have made significant improvements requiring CRMC Permitting and/or Buffer Zone considerations. It should be further noted that the CRMC reviews each property on its own and does not consider neighboring development as part of an application or Variance Request.

**Variance:**

Section 1.1.7(A)(2)- Adverse Environmental Impacts: The submitted narrative states as demonstration that the project will not result in adverse environmental impacts the fact that “*The proposed construction is proposed to take place as far as possible from the Coastal Feature...*”. The narrative makes this definitive statement without having requested relief from the Town setback from the road (front setback). It is possible that the proposed construction is not located as far back as possible, and that additional distance could be obtained with front setback relief.

The response to this criteria goes on to detail measures that were taken by the applicant on a separate lot located on Ram Island Road, and appears to have been a “trade-off” agreed upon by the applicant and DEM to get a system approved at this location. It would seem that concern for environmental impacts was part of DEM’s review process as well as CRMC’s. The fact that the system has been limited to a composting toilet is evidence that concern for environmental impact exists.

Staff does not believe this criteria has been met.

Section 1.1.7(A)(3)- Site Conditions: The submitted narrative states that “*Appropriate Variances have been sought and obtained from the DEM for the OWTS...*” and repeats the assertion about mitigation elsewhere on Ram Island Rd. Staff again points out that CRMC required Variances from the Town for front Setback were not sought.

Staff cannot opine on this, as the argument against further Variance appears to be a legal argument. This will be discussed by CRMC Legal Counsel. However it appears that the 14 year timeline referred to by Mr. DeAngelis is related to Town issues, not CRMC issues, and that front setback relief could have been requested during that interval (and after the issuance of the 2016 PD).

Section 1.1.7(A)(4)- Minimum Necessary: The Variance request points out that the front setback area is proposed to be utilized for parking and stormwater management and that there is no further minimization possible due to those required uses. Reconfiguring the driveway and parking could be considered, as well as the use of raingardens to allow for additional space to move the development away from the Buffer Zone.

Staff does not believe this criteria has been met.

Section 1.1.7(A)(6)- Undue Hardship: The Variance request states that the applicant has spent 14 years obtaining variances and permits needed to develop this lot, and states that further delay in asking for additional relief represents an undue hardship. Staff would point out that a Preliminary Determination was

done in 2016 for the current owner of the property, which pointed out the required Variances. During the 5 year interval between this PD and the submission to CRMC, no relief from the Town was sought.

**Variance Opinion/Recommendation:**

It is staff's opinion that the Variance Criteria have not adequately been met.

**LEGAL ARGUMENT:**

Staff has been notified that the question of the front setback Variance is one of legal concerns. Staff has been informed that CRMC Legal Counsel will handle that portion of the Variance Request.

**SUMMARY:**

Staff is aware that this site has a lengthy permitting and litigious history. It is staff's understanding that the bulk of this history is to do with the approval of the OWTS. It seems clear to staff that the difficulties in approving the OWTS, the requirement for a composting toilet, as well as the off-site mitigation of a separate system all illustrate concerns for environmental impact.

It is also clear to staff that at no point during the 14 year history of this property did the owner request relief from the Town for the front setback. No explanation of this failure to request relief has been made to staff. The Preliminary Determination issued to the current owner in 2016 detailed the need for a Variance, and deeper review of the property would have revealed to the owner a similar statement made in a 2000 Preliminary Determination for a different owner.

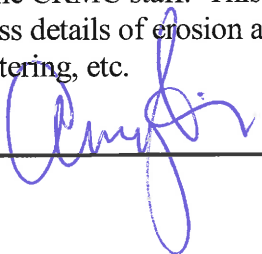
The submitted application further shows a proposed OWTS two feet from the Buffer Zone with an LOD that intersects the OWTS. There have been no explanations as to how this OWTS will be installed without disturbing either the LOD or the Buffer – in fact the submitted narrative states that Buffer vegetation will be temporarily disturbed – an impact that is not shown on submitted plans.

It is staff's opinion – absent legal arguments - that the Variance Criteria have not adequately been met. Had the applicant requested Town relief and/or satisfactorily demonstrated why the OWTS was required to be in its proposed location, it is possible that this application would have been completed administratively.

Should the Council approve this Assent, the following stipulations are suggested:

- Prior to Assent issuance, the applicant is required to submit additional detail on the installation of the OWTS. The purpose of this is to clarify impact to the required Buffer Zone and establish a proper LOD and Buffer revegetation plan.
- Prior to Assent issuance the access stairs to the deck shall be relocated to either side of the deck to ensure a minimal 10 foot separation from all structures and the required CRMC Buffer Zone. Plans depicting such shall be submitted to CRMC.
- Prior to initiation of construction, the applicant is required to schedule a meeting between the contractor and the CRMC staff. This meeting will be held to clarify and stress the terms of the permit, and to discuss details of erosion and sedimentation controls, methods of construction, construction timing, dewatering, etc.

Signed \_\_\_\_\_



Staff Biologist