



September 4, 2020

Sent via cstaff1@crmc.ri.gov and rsinger@crmc.ri.gov

Mr. Ross Singer, Permitting Staff
Coastal Resources Management Council
Stedman Government Center, Suite 116
4808 Tower Hill Road
Wakefield, RI 02879-1900

Re: **CRMC Application No. 2020-07-031**

Dear Mr. Singer:

Pursuant 650 R.I. Code R. § 010-00-1.5.1(F) and § 020-00-1.1.6(G), Ms. Kathryn Lundin and Mr. Stephen Lundin¹ hereby object to and request a hearing on the above referenced application.

As more fully described below, the proposed activity has the potential for significant adverse impacts on coastal resources, projects into a municipal mooring field and fails to meet the standards for granting the variance.

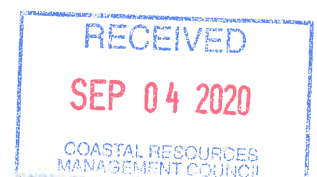
I. **Proposed Activity will have Adverse Impacts on Coastal Resources**

The project will significantly impact coastal resources and, therefore, should be denied and/or modified to mitigate impacts.

Section 1.2.1(C)(2)(a) states it is the Council's goal to maintain and, where possible, restore the high scenic value, water quality, and natural habitat values of Type 2 waters, while providing for low intensity uses that will not detract from these values.

Section 1.2.1(C)(2)(d) requires the applicant to demonstrate that there will be no significant adverse impact to coastal resources, water dependent uses or public's use and enjoyment of the shoreline and tidal waters of the State. If an impact exists, it is grounds for denial or modification of an application for an Assent.

¹ Lundins reside at 68 Brownell Street, Warren, RI and are abutters to the project site.



A. Water Quality and Coastal Resources will be Impacted

Section 1.3.1(A)(1)(g) requires the applicant to demonstrate that the project will not result in significant impacts to water turbidity and sedimentation. See, also section 1.2.1(C)(2)(d)(1) – grounds for denial or modification of an application for an Assent when, “The construction of the proposed facility may cause significant impacts on coastal wetlands and other public trust resources (e.g. shellfish, finfish, submerged aquatic vegetation, etc.).”

Propeller wash from a vessel disturbs sediments, resulting in turbidity, poor water quality, and adverse effects on the ecology (e.g., fish spawning grounds, shellfish beds and SAV² habitat). The application does not address the presence of SAV (e.g., eelgrass) or potential impacts to the ecology as required by section 1.3.1(D)(11)(b). The project should be modified and/or reevaluated to mitigate these adverse affects.

The terminus of the boating facility is situated in approximately 2.5’ of water at mean low water (MLW) and approximately 6.5’ of water at mean high water (MHW). The application does not specify the vessel size to determine the expected vessel’s draft. Thus, the potential for adverse impacts associated with propeller wash and the utility of the dock is concerning. Notwithstanding the absence of this information, a typical recreational boat of 27’- 32’, drafts approximately 3’ of water. Based on this realistic scenario, the utility of the proposed dock is questionable, if a portion of a vessel could run aground at low tide (twice daily). Even at low or mid tide, the affects of propeller wash are likely to occur; possibly even during high tide.

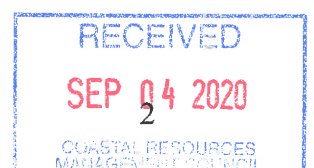
At a minimum, the applicant should address the potential for propeller wash impacts and the overall utility of the project.

B. Water Dependand Uses

Section 1.3.1(A)(1)(g) requires the applicant to demonstrate that the project will not result in significant conflicts with water dependent uses and activities such as recreational boating, fishing, swimming, navigation, and commerce. See, also section 1.2.1(C)(2)(d)(3) – grounds for denial or modification of an application for an Assent when, “The proposed facility would significantly interfere with and/or impact other public trust uses of the tidal or inter-tidal areas of the shoreline (e.g. interfere with navigation).”

There is a dearth of information in the application discussing water-dependent user conflicts. Notwithstanding the lack of information, year-round, vessels, anglers, walkers and shellfishers, bathers and kayakers regular use the near shore area and the waters adjacent to the proposed boating facility. Both the perception of and the actual physical barrier caused by a boating

² Submerged aquatic vegetation.



facility impede horizontal shoreline access.³ In the case at hand, the 168' structure provides a mere 5.5' passage under this boating facility. Moreover, the 168' structure will impact inshore anglers, kayakers and other small vessel use.

C. Scenic Values

The application depicts existing boating facilities within the area, suggesting that the proposed boating facility will be consistent with the surrounding area.

In reality, the proposed boating facility is incongruent to the area affecting the Lundins. This 160' atypical boating facility will mar the Lundin's viewsheds. The applicant has not provided sufficient evidence to demonstrate that § 1.2.1(C)'s polices to maintain high scenic values are met, as required by § 1.2.1(C)(2)(d).

At a minimum, the additional 58' protrusion unnecessarily detracts from the Lundin's scenic viewshed.

D. Depth of Water Adjacent to the Site Requires Denial or Modification

Grounds for denial or modification of an application for an Assent are enumerated in section 1.2.1(C)(2)(d)(4), which states:

Water depths adjacent to the site would require dock span lengths in excess of the standards contained in § 1.3.1(D) of this Part in order to allow normal and appropriate use of the dock by a vessel.

The application does not state why this project is seeking a 58' variance; however, it is apparent that the variance is requested to access deeper water. In other words, the project is seeking a boating facility length in excess of § 1.3.1(D) because of limiting water depth. While the granting of variances might be required to address "*minor*" deviations, in the case at hand, the 58' variance request seeks a "*major*" deviation; i.e., greater than a 100% deviation from the standard.

II. Proposed Boating Facility Projects Into Municipal Mooring Field

Section § 1.3.1.D.11(m) states, in relevant part:

...in all cases, residential and limited recreational docks, piers, and floats shall be setback at least fifty (50) feet from approved mooring fields... .

³ The Lundins already experience the psychological and physical impediments to the shoreline caused by similar boating facilities in this area.



The residential boating facility as designed would project **into** the existing Town of Warren Mooring Field 7. As such, it would, 1) require a variance from § 1.3.1.D.11(m); and 2.) require relief from the recommended 50' setback from the Warren Harbor Management Commission. If the relief is approved by the Harbor Management Commission, then the Harbor Management Commission shall recommend to the Town Council an amendment to the approved mooring area, thereby reducing the overall size of the mooring basin immediately adjacent to the proposed boating facility.

III. **Variance Should be Denied for Failure to Meet Criteria**

Pursuant to § 1.1.7(A), six (6) criteria must be satisfied to grant a variance. At a minimum, the application, as proposed⁴, fails to meet all six (6) criteria; specifically, criteria 1, 2 and 6.

A. **§ 1.1.7(A)(1)**

The proposed alteration conforms with applicable goals and policies of the Coastal Resources Management Program.

As discussed above, the application does not conform to the goals and policies.

B. **§ 1.1.7(A)(2)**

The proposed alteration will not result in significant adverse environmental impacts or use conflicts, including but not limited to, taking into account cumulative impacts.

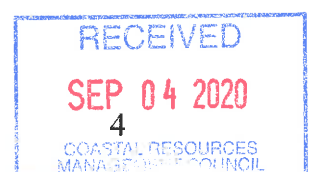
As discussed above, the application results in significant adverse environmental impacts and use conflicts.

C. **§ 1.1.7(A)(6)**

Due to the conditions of the site in question, the standard(s) will cause the applicant an undue hardship. In order to receive relief from an undue hardship an applicant must demonstrate inter alia the nature of the hardship and that the hardship is shown to be unique or particular to the site. Mere economic diminution, economic advantage, or inconvenience does not constitute a showing of undue hardship that will support the granting of a variance.

If the variance is denied, a boating facility might be unbuildable due to shallow waters in the area of Mount Hope Bay. 1) Not having a boating facility is not an “undue hardship”; and 2) shallow water is not unique to this site.

⁴ The application provided to the Lundins for public comment did not contain a narrative describing how the six (6) criteria are met.



In closing, the Lundins respectfully object to this application and request a hearing to present evidence in furtherance of their objections. Future notices should be addressed to the undersigned and the Lundins⁵:

Ms. Kathryn Lundin and Mr. Stephen Lundin
68 Brownell Street
Warren, RI 02885
646-554-5238 (Stephen)
917-854-5241 (Kathryn)

We thank you in advance for your attention to and consideration of these comments.

Respectfully submitted,
Ms. Kathryn Lundin and
Mr. Stephen Lundin,
By their Attorney:



Christopher A. D'Ovidio.

cc: Kathryn Lundin; katelundin@yahoo.com
Stephen Lundin; stevelundin@yahoo.com

⁵ The public notice was not sent to 68 Brownell Street, Warren, RI02885.

