

STATE OF RHODE ISLAND
PROVIDENCE, SC.

COASTAL RESOURCES MANAGEMENT COUNCIL
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879-1900

DECISION

Petition of: William and Nancy Gilbane

Docket No.: 2021-09-093

William and Nancy Gilbane (“Applicants”), filed with the Coastal Resources Management Council (“Council”) an application to construct and maintain a residential boating facility consisting of a 4’ by 64’ fixed timber pier with a 1,200 lb boat lift. The coastal feature is manmade shoreline (bulkhead) on developed back barrier. Applicants’ proposed residential boating facility extends 67’ beyond mean low water and achieves a water depth of 4’. The proposed project location is 1159 Succotash Road (Assessor’s Plat I-J, Lot 64-2), Narragansett, RI 02879. Applicants proposed locating the project in Point Judith Pond Breachway. The water type is Type 5, commercial and recreational harbors. Applicants’ proposed project requires a variance to 650-RICR-20-00-01.3.1(D)(11)(l)(2), which dictates that residential boating facilities shall not extend 50’ seaward of mean low water, and 650-RICR-20-00-01.3.1(D)(11)(k), which requires that residential boating facilities not intrude into the area within 25’ feet of an extension of abutting property lines.

The Council held a meeting on October 11, 2022, pursuant to the Administrative Procedures Act. At that time, evidence was submitted on behalf of Applicant. Further evidence was submitted by staff members of the Council. All submitted evidence was incorporated into the record. All evidence so submitted to the Council pursuant to this application whether it be by interested parties, through its staff members and other various state agencies has been and is available to all interested parties at the Council offices located at the Stedman Government Center, Tower Hill Road, Wakefield, Rhode Island 02879.

Prior to the October 11, 2022 meeting, CRMC staff generated a CRMC Decision Worksheet and Staff Report (hereinafter collectively referred to as “The CRMC Staff Report”) complete with Staff Recommendations(s). The staff recommendation, in the CRMC Staff Report, states “No Tech Obj, Defer for Comments.”

CRMC Senior Environmental Scientist, Tracy Silva, explained at the October 11, 2022 meeting that the Applicants worked to remove or reduce variances required by their initial plans. CRMC staff reported that any project proposed by the Applicants would require relief given the nature of the shoreline adjacent to the Applicants' property. CRMC staff further noted that neither of Applicants' abutters are in conformance with the CRMC regulations. CRMC staff concluded that the proposed layout is the best layout.

The attorney for the Applicants, John Revens, Jr., Esq., was present at the hearing and questioned Applicants' surveyor, Mark Dowdell, regarding the location and status of the boating facilities associated with the abutting properties.

An objector, Benjamin Walker (the Applicants' southern abutter) was represented by William Landry, Esq. at the hearing. Attorney Landry indicated that the Objector's boating facility had been permitted since 1954. Mr. Landry further indicated that the facility received additional permitting from the CRMC in 1993 and 2014. Mr. Landry indicated that Mr. Walker agreed to remove two docks that were the subject of CRMC enforcement review. Mr. Landry argued that the project as proposed does not represent the least relief necessary and would create substantial use conflicts. Mr. Landry indicated that it was the objector's position that the project should be moved away from the property line slightly and cut back a little bit.

Council Member Gagnon moved approval of the application subject to a de minimis reduction in the boat lift's distance from shore, as to square the proposed boat lift with the proposed pier. Member Gagnon, in support of his motion, relied on the staff report, and all terms and conditions contained therein, particularly as those findings related to the standards for the requisite variances.

After hearing thereon, and consideration thereof, the Council made the following findings of fact:

1. On October 22, 2021, CRMC accepted Applicants' proposal to build a residential boating facility.
2. The proposed project location is 1159 Succotash Road, Narragansett, RI 02879 (Assessor's Plat I-J, Lot 64-2).
3. The property at 1159 Succotash Road is adjacent to "Point Judith Pond Breachway" which is Type 5, commercial and recreational harbors.
4. The coastal feature is manmade shoreline (bulkhead) on developed back barrier.

5. Applicants' proposed facility consists of a fixed timber pier leading to a boat 1,200 lb boat lift.
6. The proposed fixed timber pier would be 4' by 64'.
7. Applicants' application is Category A*.
8. Applicants' application, although Category A*, came before the Council because CRMC received comments from an objector.
9. The CRMC Staff Report notes that an objector submitted a letter stating its primary concern is the "increase in scope/area of the proposed facility from the pre-existing dock."
10. The CRMC Staff Report notes that "regardless of the former structure, a residential boating facility can be sited in this location which continues to allow access to existing facilities."
11. The CRMC Staff Report states that "the applicant has worked with staff to provide a design consistent with Redbook policies and standards." The CRMC Staff Report qualifies this statement by noting the need for length and property line variances.
12. The CRMC Staff Report notes that the facility requires a variance to 650-RICR-20-00-01.3.1(D)(11)(l)(2), the residential boating facility length standard, and 650-RICR-20-00-01.3.1(D)(11)(k), the property line extension setback standard.
13. 650-RICR-20-00-01.3.1(D)(11)(l) requires that "residential and limited recreational boating facilities shall not extend beyond that point which is . . . fifty (50) feet seaward of mean low water."
14. 650-RICR-20-00-01.3.1(D)(11)(k) requires that "residential and limited recreational boating facilities shall not intrude into the area within twenty-five (25) feet of an extension of abutting property lines."
15. The CRMC Staff Report indicates that "the applicant has submitted variance

burdens of proof and staff is of the opinion that it is a reasonable design, consistent with CRMC standards and without additional significant environmental impact.” On that basis, the standards for granting a variance are met.

16. The Council discussed the potential of reducing use conflicts by moving the proposed boat lift landward, thereby squaring the lift with the terminus of the timber pier and providing more space for access to the boating facility associated with the abutting property.
17. CMRC Staff confirmed that squaring the boat lift with the timber pier would reduce the length of the project by 3’.
18. A 3’ reduction in the length of the facility would result in the boating facility achieving a length of 64’ beyond mean low water.
19. The Council noted that a modification shifting the boat lift landward would implicate 650-RICR-20-00-01.3.1(R)(3)(e)(4), the standard for boat lift depth in areas of Submerged Aquatic Vegetation.
20. CRMC Staff, considering the proposal to reduce the length of the facility by 3’, indicated that a depth achieved by the boat lift would be over 3.5’.
21. CRMC staff affirmed Legal Counsel’s understanding that the proposed modification is de minimus, and thus, the staff can support it.
22. Council Member Gagnon moved approval of the application subject to a de minimis reduction in the boat lift’s distance from shore as to square the proposed boat lift with the proposed pier. Member Gagnon, in support of his motion, relied on the staff report for the findings of fact to support the motion, and all terms and conditions contained therein, particularly as those findings related to the standards for the requisite variances. The motion received a second from Council Member Gomez.
23. The Council hereby adopts and incorporates the findings made by CRMC staff.
24. The Council hereby finds that Applicant has met the burdens of proof under the applicable sections of the CRMP or SAMP.
25. Based on the foregoing, there is not a reasonable probability of conflict with a

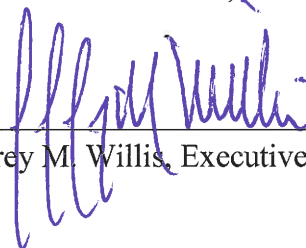
plan or program for management of the State's coastal resources as well as damage to the coastal environment of the State of Rhode Island.

Conclusions of law:

1. This Council has been granted jurisdiction over the above-mentioned project pursuant to RIGL Section 46-23-1, *et. seq.*
2. The proposed alterations do not conflict with the management plan approved and adopted by this Council and in effect at the time the application was submitted.
3. The record reflects that the evidentiary burdens of proof as set forth in the Coastal Resources Management Program have been met for this project.

WHEREFORE, as a result of these findings of fact, and conclusions of law, it appears that the proposed activity does not have a reasonable probability of causing a detrimental impact upon the coastal resources of the State of Rhode Island. As a result of these findings of fact and conclusions of law, the Council hereby approves the application on a unanimous vote by the members present.

FOR THE COUNCIL,



Jeffrey M. Willis, Executive Director

Dated: