Beach Regulatory Advisory Committee Meeting
DNREC/Shoreline and Waterway Services Facility
January 14, 2015

Begin at 915 am

RAC Members Present:
Mike Powell
Jennifer Luoma
Dirk Durstein
Joe Healy
Bill Lucks
Bryan Elliott
Jim Bailey
Evelyn Maurmeyer
Patti McDaniel

RAC Members Not Present:
Greg Hastings
Chuck Coltman
Brian Boutin
Sharon Lynn
Susan Love
Connie Holland
Dorothy Morris
Patrick Cooper
Tony Pratt

Others Present:
Public member
David Warga
Kim McKenna

Update on Changes to the Building Line - Powell

From the workshops, some attendees questioned and voiced their concerns regarding changes to the building line (BL) while the regulations are undergoing revisions. It was difficult for them to have an opinion on the regulations when there is uncertainty as to whether the building line will change. DNREC Division staff had an in-house meeting with the attorney and Secretary Small to discuss the history of changes to the BL which was established in 1981. Since that time, there have been subsequent changes to the regulations and the Beach Preservation Act, but not to the BL. They discussed whether conditions along the coast are now critical for making the changes to the BL (from the Act - permanent, natural changes). The ocean coast has been impacted by federal/state beach fills and does not meet the definition for permanent, natural changes. Bay beaches have been impacted by state truck haul projects. The decision by Sec. Small was for no change in BL at this time. It would be difficult to get feedback on the proposed regulation changes concurrently with changes to the BL, and that permanent, natural changes have not occurred to warrant the movement of the BL.

BL. Would you consider remapping either one alone: the bay or the ocean coast? Agree with keeping ocean coast BL as is but questioned whether BL should be reviewed for the bay coast. (ex. Broadkill Beach following the beach nourishment project.)
MP. There are some projects that will alleviate some of the long-term erosion problems.
BL. Have you identified problem areas along the bay coast?
MP. Yes, some areas have been identified based on topography (ex. South end of Prime Hook Beach) and if the BL was remapped, would be located 20 feet landward of its existing location.
BL. Can someone build on a lot if the BL is moved?
JL. Can build on lot if it existed prior to 1981. Can use the 4-step process.
BL. Are we liable for the construction activities? (If we allow someone to rebuild following a major event.)
MP. Remapping the BL does not change the levels of state responsibility.

Presentation on Issues with Current Regulations - Luoma (for copy of slide presentation see http://www.dnrec.delaware.gov/swc/Shoreline/Pages/Beach-Regulatory-Advisory-Committee.aspx)

PM. Concern regarding the 4-step process and the smallest subset of lots. Definitions do not address whether cantilevered decks could be considered roofs, needs clarification. Definitions of porch and conditioned living space need clarification (describe connection for upper and lower cantilevered decks.)
DD. Interested in how the rule was interpreted prior to the regulation changes. If we have interpreted the rules more strictly in the past, we should maintain that interpretation, not weaken it.
MP. In the existing regulations, they were not addressed.
JL. In 2008, DNREC added the restrictions for screened cantilevered decks.
PM. Clarify definition.
BL. Can you add that these areas cannot be used for sleeping areas or food preparation?
MP. We would need to explain what the benefit to the dunes would be by adding that restriction.
DD. If we wanted to go into that much detail, lenders and federal agencies have information on how space is used and we could borrow from those regulations.
MP. These areas could be included in the living space but this would change how the structure fits in the 4-step process.
PM. In one coastal area, stacked decks have been wrapped up and turned to living space.

Regarding the provision in the Act regarding repair, modification, modernize, etc.:
MP. This issue must be resolved because it could violate the 4-step process (conversion of cantilevered deck into living space).
JL. Can we add something to the Act itself?
DD. The General Assembly could do it, but we could address it in the regulations.
MP. Questioned what the first phrase means.
DD. (answered) No matter what we say otherwise in the regulations, this you can do.
PM. Isn't the presumed intent not to make additions?
EM. Could interpret the phrase as opposite and provided example of rewording.
JH. In Bethany, can only build on 40% of the lot. The cantilevered deck is part of the 40%.
MP. The state does not use percentages. The 4-step process applies to those seaward of the BL.
JL. A tear down and build project is treated differently than those who want to modernize and modify their structures. The 4-step process could kick in if the structure is substantially improved.
MP. This provision needs clarification.

DD. This is a 2006 amendment and now we have to make it consistent with the regulations. The intent was to alleviate the concern for a homeowner for making improvements.
JL. There is a section in the current regulations that allow maintenance and repair work if it is undertaken pursuant to the listed limitations.
MP. A regulatory section already occurs that allows maintenance and repair (this was in place prior to the 2006 Act change)
JB. There was the perception by the general public in 2004 that homeowners needed state permits to paint.
BE. One lot owner, who said that he spoke to someone at DNREC, was concerned that he could not build on his lot on Big Stone Beach.
MP. There are many different scenarios at Big Stone Beach (ex. moving roads so that houses can be moved back from the bay). That person could rebuild their house following the state regulations.
JL. Provided an example of a homeowner that wanted to build seaward of the mean high tide line, but is out of the jurisdiction for these state regulations. The counties limit this type of construction and DNREC Wetlands regulates this area.
Action: Division staff and DD to draft new language for regulations.

Discussion regarding definitions:
MP. Need to be clear that even though Regulated Area will be defined, this doesn't mean that we are changing the BL.
JL. Act of god definition – discussion of comments (see slide)
DD. The first definition on the slide would lead to more litigation. We talked about electrical fire not started to by lightning; this definition would not apply to that situation.
MP. A structure can always be rebuilt.
DD. This situation should be covered in insurance regulations.
JL. The language includes "other accidental events" and this could be further defined.
(Received no comments from the RAC on this.)
DD. "No fault of the property owner" will also have to be refined. Need to see how these are used in other definitions and within the regulations. Don't want to put too many restraints on someone who wants to rebuild.
ACTION: DD to redraft definitions.
JH. Comment referring to going beyond the "act of god" definition and defining "other accidental events."
DD. We don't have to define it, though it is in the Act and the General Assembly did not define it.
JH. Keep the act of god definition simple (see second version listed on slide).
Discussion regarding Regulated Area
MP There are a few locations that one may argue whether it is a buildable lot.

Discussion regarding Coastal Engineering Standards:
JL. Need to clarify definitions for "storm damage reduction beach nourishment project" and "act of god."
PM. There are too many clauses in the definition and it makes it confusing. The definition needs clarification. What does term "engineered" modify?
MP. The first part of the phrase is a problem.
DD. The intent seems to be if someone wanted to design a beach nourishment project, then they can do that.
EM. Is it only considering beach nourishment? Or include breakwaters?

MP. Only considers beach nourishment. The context of the definition is that if a home is destroyed by an act of god that the structure can be rebuilt and if that structure is located within a beach nourishment project, it can be rebuilt in same location.

Discussion regarding Smallest Subset of Lots:
JL. This provision is already used and this definition impacts the 4-step process
EM. Is 7 the max or min?
JL. 7 is the maximum
EM. This should be clarified in the definition
MP. The smallest subset of lots is determined by the person reviewing the permit.
JL. The review also considers empty lots in the analysis; though does not include the 0 sq ft in the calculation.
MP. What happens if there are commercial buildings within the 7 lots?
JL. Commercial property is counted as one of the 7 lots, ex at Bethany Beach for house seaward of building line, but limited more by Bethany Beach local rules rather than the 4-step process.
DW. Dedicated public walkways are included in the analysis.
MP. This process seems to work now, taking into consideration the surrounding area.
PM. Example at North Bethany, only private areas considered?
MP. The smallest subset is separated by public walkways or private community boundaries.
EM. Requests that the provision be clarified so that the maximum subset is 7.

Discussion regarding Substantial Improvement:
JL. The provision refers to tear down and when the 4-step process kicks in.
PM. Can tear down as long as leaving 51% of original structure and pilings, not sure how structure and building are defined (are pilings structures, but not buildings?) The definition needs clarification.
JL. Substantial damage is in the Act.
PM. Questioned sentence structure "substantial improvement needs demolition???"
MP. Will use the FEMA definition.

Discussion on Temporary Structure:
JL. Comments received (see slide)
MP. Wants definition to be general; not include a list and questioned everything that may not have "temporary" characteristics.
DD. Aren't we worried about these structures during storms?
JH. Example - umbrella stands, isn't it better for the town to be responsible for this and not DNREC?
MP. No, we support towns doing this, but this falls within the regulations and the Act.
JH. Can you add language that would support local responsibilities?
JL. That is already covered in the existing regulations.
EM. Clarification should include that temporary structures are present only seasonally, specify a time limit.
MP. The provision needs to be clarified to include seasonal as well as really temporary structures (days).
EM. Will this apply to the state parks?
MP. That is separate from these regulations.
JB. Temporary structures have to be addressed because some things tend to show up and stay, wants to limit debris on the beach following a storm.
JL. (see following slide) for suggested language and letter of approval

Discussion on Boats in Dunes:

JL. (see slide with comments)
No additional RAC comments

Next Steps – Powell

The upcoming meeting with Town officials is set for January 30, 2015 at 10am at the DNREC/Shoreline and Waterway Services Facility.
JL. There will be a similar presentation that was given to the public at the workshops but this will be tailored to mayors, town managers, design professionals and builders, and realtors. Beach RAC members are welcome to attend.
BE. Recommended that to get the word out, can put notice in the builder newsletter for Sussex and Kent counties (contact Shannon Morris, Jeff Shockley).
PM. Contact homeowners associations.
BL. Realtors can sponsor a general membership meeting and have a presentation there. If you invite FEMA, it would be more interesting and would help DNREC.
MP. Need to make sure that there is no connection between the federal and state programs.
ACTION: BL to discuss with others on setting up the general membership meeting.
MP. April and May are good months to communicate with coastal homeowners and the targeted dates for the next round of public information workshops (not hearings). At that time, DNREC will present the most complete draft of the regulations. That draft will be submitted to the Beach RAC by February 2015.
JH. Good job today and your efforts show thought. Let's keep this moving forward.

Public comments:
None

Adjourn 1110a

Next meeting Wed, February 11, 2015