

Beach Regulatory Advisory Committee Meeting  
DNREC/Shoreline and Waterway Services Facility  
December 10, 2014

Begin at 910 am

RAC Members Present:

Mike Powell  
Dirk Durstein  
Joe Healy  
Bill Lucks  
Susan Love  
Dorothy Morris  
Connie Holland  
Bryan Elliott  
Jim Bailey  
Evelyn Maurmeyer  
Sharon Lynn  
Tony Pratt  
Patty McDaniel  
Jennifer Luoma

RAC Members Not Present:

Greg Hastings  
Chuck Coltman  
Brian Boution  
John Shulties  
Patrick Cooper

Others in Attendance:

Kim McKenna  
Janice Shute  
David Warga  
Tony Nerlinger

Introductions – Powell (moderator)

Review of Public Workshops - Powell

Slaughter attendance – 80 participants, Rehoboth Beach attendance – 30 participants

The purpose of the workshops was to receive questions and comments regarding the regulations and the issues that need to be addressed (e.g. building line, 4-step process, boats in dunes). Minutes from the workshops are on the website. (<http://www.dnrec.delaware.gov/swc/Shoreline/Pages/Beach-Regulatory-Advisory-Committee.aspx>)

Building Line Discussion – Powell

Proposal to postpone remapping of building line until the revisions regulations are completed.

DD – adjustment of building line is at the discretion of the DNREC Secretary and is a separate issue from the regulations at this time. This will not affect current regulations and building line. There have been changes to the beaches, but may not be enough for the Secretary to request the change to the building line.

ACTION: DD to check if the statute requires that the building line be redrawn entirely or if only sections can be redrawn.

MP – Any 5 to 10 foot movement of the building line is a significant change

TP – Input can come from person affected or from adjacent property owners

SL – Requests decoupling revision of line from the regulations, committee would be wise to decouple issues, too complicated and need firm legal footing, need to update datum issue first, then update the line later after the regulations are adopted.

DD – If individuals have strong feelings about the location of the line, they should be encouraged to contact the Secretary

JB – Building line is misunderstood along the Bay beaches and many are unsure of its location due to the condition of the Bay beaches. The building line is a large issue for the Bay beach communities.

(JL – current building line maps are available on line)

JB - Everyone is aware that the line will probably move landward and that scares them. Many people don't understand its purpose and what they are allowed to do. Many are afraid that it will force retreat.

ACTION: JL to concentrate on outreach for building line (in future workshops)

TP – South Bethany building line example: was at east side of Ocean Drive, now at 2<sup>nd</sup> row of houses. Issue is what to do, legal question? The definition of beach changed and building line was defined at the 10 foot contour and this change put the line in the second row of houses, one of a couple of areas that need to be dealt with first before attempting to move building line.

MP – Complicated for those to comprehend regulation changes and the movement of the building line (4-step process definition, definition of “act of god”). It will be difficult to get feedback if the people don't know where the building line will be.

TP- There is a perception for loss of investment/property because of laws of what is prohibited.

BL – Should keep the building line issue up front along with the changes to the regulations.

TP – DNREC will continue the process using the existing building line.

PM – This needs clarification. The building line can be changed.

MP- The Secretary may reestablish the building line when there are long-term natural changes.

PM – A five foot change is a huge impact, but should be clear that the state can change it, need to let people know that the building line serves a purpose and can be changed.

TP – The state doesn't define the process for establishing the building line. There has to be hearings so the public is involved.

DD – Changes to the building line involve a different process from these changes to the regulations.

TP- May need to address this in the regulations.

PM- At least that would provide some certainty.

MP- The moving of the building line is not intended to be something that would be changed after a particular storm.

JL – Definition read from act

JB – Permanent vs long-lasting

JH – Agreed that it should be addressed, propose to reconcile the regulations with an explanation of the building line and not ignore it.

MP – There were no comments from workshops that the shoreline has changed and that the building line should be moved. This may not have been an issue for those that attended.

TP – Nourishment may have played an issue, not much change in the shoreline, no compelling reason for remapping the building line, though there are some outliers (Prime Hook)

MP- JL and MP reviewed the building line from Pickering Beach southward, and the line doesn't move landward on ocean coast and on the Bay coast on in a few sporadic areas (north end of Prime Hook)

SL – For those who disagree with her viewpoint, need to resolve this issue before we move forward, lame language in how line would be established and there is no mention of how it would follow the public process

ACTION Item DD – Will review the process and discuss with Secretary, and will draft something for the committee.

ACTION Item TP- if RAC agrees, need a bold statement from DNREC that there is no compelling reason for changing the building and address the regulations from there.

Issues with Regulations and Proposed Solutions – Powell

MP – We want to get to the point where we can propose regulatory changes.

JL – slide presentation (posted on website)

Q – Question regarding 4-step process and for violating local ordinances – concerned that rogue groups may control this.

TP- The expectation of the 4-step process is based upon what is built in the area. We have to allow some flexibility because of the need for wells, side and front setbacks and still allow the neighborhood square footage.

C – The 4-step process allows judgment to operate, allows some flexibility.

TP – Have worked with some and it's been a productive process.

PM – That process works now.

SL – So can we put it in the regulations?

PM- There needs to be a definition of smallest subset of lots and identify them.

TP- Example: north Bethany model and staying within the lines of different subdivisions, north Fenwick too.

MP – Up to DNREC and RAC to define “smallest subset of lots.”

ACTION ITEM – DNREC team to develop definition.

JL – Have worked on the 4-step process with groups.

Discussion of issues regarding Cantilevered Decks

Committee Questions & Comments

MP- Use of adjacent properties may allow a different size deck that may stick out farther, better to use the neighborhood average.

TP – North Bethany example to remove one foot of deck.

MP- Bethany Beach example, immediate adjacent neighbor, pressure is so great for view that neighbors can be against each other.

BL – Is there a deck definition, single level?

MP- The state uses building codes to define decks and porches, other, but there needs to be a definition in the regulations.

SL –Is there a max number of feet that a deck can extend?

A - No, it can be engineered to extend out as far as beams can take the stresses.

JL – In most cases the lots are similar in size and deck spaces are about the same, no more than 20-25 feet.

MP- There is no gain for someone to go further.

SL – Do you want to limit encroachment on the line to keep those from moving more seaward over the long term?

JL - What are the deciding factors to create that?

SL - Do what you think is adequate.

MP - Probably not much impact if someone wanted to cantilever over dunes/vegetation.

PM - Better to go with the average encroachment, a rational buyer would approach it that way.

EM – Are these types of permit requests posted for public notice? What happens to comments received? Does the state take into account the comments?

MP –Yes, comments are taken into account and the regulations define how the state must consider and make changes to the permit.

TP – The state takes the concerns and places them back on the applicant and requires that they address the concerns. The letters are also appealable.

CH – The counties have their own regulations.

JL – The local regulations (setbacks) are the limiting factor, with the exception at South Bethany.

TP – Example: Dewey Beach double restricting regulation, adopted DNREC as a strict line.

JL- The regulations should also define porches, decks, cantilevered decks, enclosures.

SL – If cantilevered decks are not issues, why address enclosures?

TP- The issue is related to impact to dune and redirecting wind.

SL- Encourage that if enclosures are prohibited, it is linked to primary purpose of act.

MP – Concerns only if enclosed and becomes living space.

BL- Must include as “unconditioned” space in definition.

DM – The definitions already exist in the building code: covered porch vs deck.

MP - No Sussex building code available.

CH – Kent and Sussex use different building codes.

BE – There is more paperwork in Kent Co.

PM – There are some provisions in the building code.

MP - Provisions, but not definitions.

SL – If you allow enclosures this may be problematic.

BL – Will need to define the percentage of the deck for an enclosure.

Discussion of Provision from the Beach Protection Act-BPA (regarding repairing, modifying, modernizing, updating or improving) and definitions of smallest subset of lots, substantial improvement, temporary structure.

JL - All of these terms need to be included in the regulations.

PM – These do not stop someone from adding vertically.

JL – And, not expansion seaward of building line.

MP- Also need to address at what point do you not get to keep the footprint of the structure?

TP – Example: an older house that is functionally obsolete. If it is a tear down, then would have to move the new structure back. Some tear all down to the pilings then add more and rebuild.

PM – Want to achieve clarity in the provision.

TP- There is a need to balance the minimalist approach and tear-down approach in the regulations.

MP – This is addressed now - Section 2.8 Siting Requirements for Construction and Reconstruction of Structures

TP – Need to define modernize, update, or improve.

SL - Need to define existing structure, second part is less clear.

MP – Definition of lawfully constructed building - needs some sort of threshold.

SL – Could match up with other definitions.

PM – The definitions/thresholds should be clear in the ultimate removal of a home from seaward of the building line.

TP – The purpose of the BPA is to move all structures landward of the building line. The challenge is from those property owners who do not want to move landward.

MP- Sometimes the property owners will tear down only what they can without moving landward

PM– Need to separate regulations from those with bulkheads vs the homes without them.

MP – There are no definitions that separate bulkheads and crossovers from other structures.

JL - When the BPA was written, wasn't looking at renovation of existing structures.

C - If destroyed by storm, a structure can be built in the same place.

SL – This is problematic. Need to get the General Assembly to fix this.

BE – Broadkill Beach example.

Discussion of handouts of proposed definitions.

MP – Re: DNREC proposed definitions. Requested that the RAC review and be prepared for discussing them at the next meeting.

ACTION ITEM – RAC to review

SL - Requested deadline for submitting comments.

MP- Will provide the list of terms that will be defined and where they are found in the regulations or BPA. The BPA changes are driving the definitions that are needed.

JL- The deadline should be in 2 weeks.

Discussion of additional outreach and workshops

MP- Anticipate additional public workshops, and will need to reach out to target groups: realtors, builders, municipal officials, surveyors. The DNREC team plans to hold a meeting in January for mayors and elected officials, counties, and incorporated areas. The team plans to hold other workshops and would like to reach out to builders. Requested how to get in touch with them.

PM – Check with builders/contractor associations – home builders association has an email list.

BL – To best get the word out, host small meetings and invite certain individuals, working with key people in the industry. For realtors, contact the county associations and the public policy committee.

BE – For builders, county sends out info, Shockley and Marc St Jean that are familiar with who is currently building on the coast in Kent and Sussex Co. Go directly to them rather than through an association.

BL - Sussex Co has a good IT person that could help.

BE – Surveyors are an additional group.

SL - What is it that you want from these groups?

MP – Feedback -while we are in the information gathering mode similar to the previous workshops

SL- Builders should be the targeted group.

BL - Realtors will be concerned about private property rights, not what the regulations say.

JL - A lot of questions received from realtors are for tear downs.

Public comment – none

Adjourn at 1110a

Next meeting Wed, January 14, 2015