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CITY OF RYE Planning Commission

Resolution

No. 02-2010

Application Name: **Molloy Cottage**
Approval Type: Wetland and Watercourses Permit
Application Number: WP# 261
Project Description: Violation: Request to maintain a masonry seawall constructed without required permits
Street Address: Kuder Island
Tax Map Designation: Sheet: 159.5 Block: 1 Lot:1
Zoning District: R-2 Residence District
Date: February 2, 2010



WHEREAS, a Notice of Violation dated May 29, 2007 was sent from the Rye City Building Inspector to Kuder Island Colony for building a stone wall, which occurred without a building permit as required by Chapter 68 of the Rye City Code or a wetlands and watercourses permit as required by Chapter 195 of the Rye City Code; and

WHEREAS, since there was no response by Kuder Island Colony to the May 29, 2007 Notice of Violation, a second Notice of Violation dated June 24, 2008 was sent from the Rye City Building Inspector to Kuder Island Colony for building a stone wall, which occurred without a building permit as required by Chapter 68 of the Rye City Code or a wetlands and watercourses permit as required by Chapter 195 of the Rye City Code; and

WHEREAS, on March 6, 2009, Benjamin R. Minard, Jr., President of the Kuder Island Colony, Inc. Board of Directors, (hereinafter "Applicant") submitted an application for Wetland and Watercourses Permit approval pursuant to Chapter 195, *Wetlands and Watercourses*, of the Rye City Code for a property, located on Kuder Island; and

WHEREAS, the application sought to maintain a "repaired and reconstructed" seawall located within 100-feet of Milton Harbor, which is a regulated watercourse; and

WHEREAS, on March 13, 2009 the application was referred to the Conservation Commission/Advisory Council (hereinafter "CC/AC") for their review and recommendation; and

Applicant Signature

Date

WHEREAS, the CC/AC noted in its March 20, 2009 letter to the Planning Commission that they found the application “Unacceptable in present form” and recommended “removal of the newly constructed portions of the seawall without further documentation as to its need”; and

WHEREAS, the Planning Commission conducted an inspection of the subject property on May 2, 2009; and

WHEREAS, a noticed public hearing was held on July 28, 2009 and all members of the public wishing to be heard were given the opportunity to be heard; and

WHEREAS, the public hearing was continued to the Planning Commission’s August 11, 2009 meeting date; and

WHEREAS, at its August 11, 2009 meeting the Planning Commission continued the hearing and determined that the wetland permit application is an “Unlisted Action” under New York State Environmental Quality Review Act (SEQRA) and required the applicant to amend its application to provide the applicable environmental assessment form and application for coastal consistency pursuant to Chapter 73, *Coastal Zone Management*, of the Rye City Code and that a new hearing notice be prepared and circulated as required by law reflecting the additional required Planning Commission approvals; and

WHEREAS, on November 30, 2009, the applicant submitted an amended application including a new Wetlands and Watercourses Application, a Coastal Assessment Form, a LWRP Coastal Consistency Application, an Environmental Assessment Form and related reports, studies, permits and other documentation; and

WHEREAS, a new notice of public hearing on the amended application was prepared by the City Planner, which notice was provided to the applicant for circulation to property owners and published in the City’s Official Newspaper in advance of the Planning Commission’s January 12, 2010 meeting; and

WHEREAS, a public hearing was held and closed on January 12, 2010 and all members of the public wishing to be heard were given the opportunity to be heard; and

WHEREAS, pursuant to §195-5.B.(2)(b) of the City of Rye Code, the Planning Commission “shall evaluate wetland functions and the role of the wetland in the hydrologic and ecological system and shall determine the impact of the proposed activity upon public health and safety, rare and endangered species, water quality and additional wetland functions.” In addition to any materials expressly required in the Code and the Rules and Regulations of the Planning Commission (“Regulations”), the Commission may require additional information as needed; and

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WHEREAS, Pursuant to Chapter 73 of the Rye City Code, the Planning Commission is required to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications such as this for actions located in the coastal area and to ensure that such actions are consistent with said policies and purposes;

NOW, THEREFORE BE IT RESOLVED, that pursuant to §195-5.B.(2)(b) the Planning Commission finds that the less-detailed description of the project in the Project Plans meets the minimum standards for plans and estimates;

AND, BE IT FURTHER RESOLVED, that the Planning Commission finds based on its review of the Environmental Assessment Form (EAF) and the criteria listed in Section 617.7(c) of SEQRA, that the proposed action will not have a significant adverse environmental impact;

AND, BE IT FURTHER RESOLVED, that the Rye City Planning Commission hereby denies Wetlands and Watercourses Permit #261 since it does not meet the following *Standards for Permit Decisions* pursuant to §195-5.D of the Rye City Code:

- The Planning Commission conducted a site walk of the property and considered competing testimony and information in the public hearing regarding the need for the seawall. The applicant stated that erosion of an existing slope adjacent to the Molloy Cottage required the construction of the seawall. Since the wall was constructed without the required permits the Commission was unable to assess the pre-development condition and extent of possible erosion. The Commission was unable to determine whether an alternative, non-structural measure could be implemented to address possible erosion concerns and potentially meet the applicant's needs. In addition, the Commission was unable to determine whether a lower stone wall or some other alternative design could meet the reasonable needs of the applicant and address possible erosion concerns. Given these conditions and circumstances the Commission could not fulfill its obligation under §195-5.D(1) of the City's Wetlands and Watercourses law to determine that impacts and losses were avoided to the maximum extent practicable or, if they cannot be avoided, that they were minimized to the maximum extent practicable. Constructing a substantial 16-foot high wall that resulted in a 230% increase in the length of the existing wall and then seeking permission from the Commission after-the-fact denies the Commission the opportunity to consider alternatives as required by law and sets an undesirable precedent.
- The applicant's engineers have prepared reports attesting to the assumed structural conditions of the wall and its response in coastal storm events. This analysis, however, is based on a number of assumptions and qualified statements by the applicant's engineers since the wall was constructed without the benefit of plans, required permits or construction inspections. The Commission therefore cannot reach conclusions regarding the constructed wall's impact on "storm barriers" or the "safety of the proposed activity from flooding, erosion, hurricane winds, soil limitations and other hazards and possible losses to the applicant and subsequent purchasers of the land." Therefore, the application

is not consistent with §195-5.D(1)(c) and (d) of the City's Wetlands and Watercourses law.

- The application is not consistent with §195-5.D(1)(f) of the City's Wetlands and Watercourses law because the wall was constructed without required federal and state permits and therefore not consistent with their regulations.
- The application is not consistent with §195-5.D(2)(a) of the City's Wetlands and Watercourses law, which requires the Commission to deny the wetland permit if certain conditions are met. The structural integrity of the wall has not been confirmed, which creates the potential that the activity may "threaten public health and safety" or "cause nuisances" if it fails. The reports of the applicant's engineers provide a number of qualified statements and assumptions since the wall was constructed without the benefit of plans, required permits or construction inspections. The wall also "violates other federal, state or local regulations" since it was constructed without required permits.

AND, BE IT FURTHER RESOLVED, that the above renders moot any consideration of consistency with the LWRP pursuant to 75-5.D of the Rye City Code, as well as any necessity to determine whether State and Federal permit applications and progress reports, as opposed to actual permits from those agencies, is sufficient for this application.

I certify that the foregoing resolution is a correct copy of Planning Commission Resolution #02-2010, which was duly adopted on February 2, 2010.



Christian K. Miller, AICP
City Planner

02/04/10
Date