

FLOOD REVIEW BOARD

Date: August 22, 2019

Time: 8:30 AM

Location: Larimer County Building (200 W. Oak Street), Watson Conference Room

Contact: Devin Traff, Larimer County Engineering Department

MEETING MINUTES

Staff Present: Devin Traff, Tina Kurtz, Eric Fried

Board Members: Chris Thornton, Mike Oberlander (via phone), Greg Koch, John Hunt, Elisabeth Ervin-Blankenheim

Applicant(s) Present: Bertrand Johansen, Jeremy Wilcox, Hank Wills

Mr. Thornton opened the meeting at 8:35 a.m. MDT

Introductions

PVREA Floodplain Special Review

Mr. Traff introduced the project.

Mr. Hunt, acting as a consultant for the applicant, gave an overview of the project and the scour analysis he performed. He described it as having four total fiber optic line crossings in Larimer County. Three of the crossings are overhead on existing power lines and poles and one buried line in the Horsetooth Heights neighborhood. The buried line crosses the Flood Hazard Zoning District (Zone A) under an unnamed tributary, with no defined channel, that flows into Inlet Bay on Horsetooth Reservoir. Mr. Hunt reviewed the report he produced describing his analysis of a worst-case scour scenario using a 2-D model of the project area and determining the hydrology using the Colorado Urban Hydrograph Procedure (CUHP). The report conclusion was that during a 500-year flood event, the modeling shows a scour depth of three feet. The line will be buried to a depth of four feet, so in his opinion, there should not be a flood related exposure of the buried line. He also mentioned there

would be no remaining disturbance to the ground after the project as it will be returned to existing conditions.

Mr. Wilcox mentioned that the contractor has previously worked with PVREA and they do a good job with site restoration. This line is being buried because it cannot go over a PVREA transmission line due to clearance requirements for lines of different voltage.

Mr. Thornton asked whether there was a line item in the project to replace the disturbed vegetation. Mr. Hunt said that is the intention of the PVREA. Discussion on getting vegetation replaced in the disturbed area to what is currently on the site.

Mr. Koch asked about the length of the bore. Mr. Hunt answered that the length of the bore inundated by flood flows, according to the modeling, is 280 feet. Of the 280 feet, 180 feet is within the Flood Hazard Zoning District. The total length of the bore is 575 feet.

Mr. Oberlander asked if the bore pits are outside of the floodplain. Mr. Wilcox answered that the bore pits are outside of the floodplain, but there is a pole box within the floodplain. Mr. Oberlander noted that he wanted it to get back to existing grade.

Mr. Koch asked Mr. Traff how he would get verification of the area getting back to existing grade. Mr. Traff said the permit condition requires the project to be built to the submitted plan and that a post-project survey be provided.

Ms. Ervin-Blankenheim moved to recommend approval to the Board of County Commissioners for the Trilby Substation to Masonville Substation project for the Poudre Valley Rural Electric Association with the condition to reseed and resurface to original condition. Seconded by Mr. Koch. Motion passed 4-0.

55 North Fork Variance

Mr. Traff introduced the project. This is a variance request from Larimer County Land Use Code 4.2.2 to allow an as-built deck extension and fence replacement within the North Fork of the Big Thompson River Floodway Zoning District. There was damage to the deck, floor, foundation and fence due to the September 2013 flood. In April 2018, Mr. Johansen received a building permits to repair the foundation, subfloor and replace the deck within the pre-flood footprint. The deck has been expanded beyond the original footprint without permits. The fence was also replaced without a permit. The applicant has previously met with County staff who told the applicant that he would need to get a variance from the Board or remove the expanded portion of the deck and fence. He has also gone before the Board of County Commissioners who directed him to apply for variance with the Board for the expanded deck and fence using the information he already had, given the concern expressed by Mr. Johansen over the engineering costs associated with a variance application.

The variance request is from LCLUC 4.2.2.F.1., encroachment in the floodway, and the flood zoning district use table which does not allow for residential use in the floodway, as the deck expansion constitutes an increased residential use.

Mr. Johansen stated that he did not apply for a variance because he recollected being told at a meeting with County staff in 2018 that staff was more than 99% sure a variance would not be granted by the Board. He also stated that work did not continue on the deck after a stop work order had been posted, as the deck had already been finished.

Mr. Thornton asked Mr. Johansen if the replaced fence is in the same area and is the same type of fence as before the flood. Mr. Johansen said that it was in the same place and is the same type.

There was discussion on whether a building permit would be required for the deck, which in this case it was not because it is less than 30" high and does not serve the front door. Eric Fried, Larimer Co Chief Building Official said that exemption from a building permit does not exempt other permits/regulations as required by the Land Use Code.

Mr. Hunt explained that he can understand Mr. Johansen's frustration about getting the message of almost no chance of having a variance approved. However, he thought this might have been said to him because the Code regarding development in the floodway is derived from FEMA regulations. The County enforces these regulations and faces potentially severe consequences related to the National Flood Insurance Program if the regulations are not followed and variances allowed without justification. Mr. Hunt has sympathy regarding the concern over the cost of no-rise documentation compared to the investment in the fence and deck, but that is the only way FEMA allows the County to consider a variance to this regulation.

Ms. Ervin-Blankenheim said the regulations exist for a reason which is to protect public health, safety and welfare. She mentioned the confluence of West Creek and North Fork of the Big Thompson River near the cabin and her concern that there could be blockage downstream due to debris from the property.

Mr. Oberlander mentioned there have been previous variance requests where there has been construction in the conveyance shadow within the floodway without having detailed modeling but with a Professional Engineer's (PE) no-rise certification. He said that the Board cannot decide on whether a project in the floodway needs a no-rise analysis from a PE based on its size, as they all need a no-rise certification from a PE.

Mr. Thornton wanted to know which County floodplain rules apply to an existing fence that was damaged and would be replaced. Mr. Traff stated that the County floodplain rules only allow t-post and agricultural wire fencing and that fence replacement after a flood is not specifically addressed. He said that staff consider it a non-conforming structure subject to a substantial damage assessment and the replacement cost would be greater than 50% of the value. Mr. Johansen noted that he has owned the property for 16 years and the fence has been there since he owned it.

There was further discussion on how the rules applied to replacement of a fence that existed prior to the flood and how this could impact other fences countywide. There was also a discussion of how fences are treated in models, including the CHAMP model within this area. Mr. Koch noted significant fences have been included in some models he has been involved in developing, but he was unsure

whether fences were included in the CHAMP model, although he thought it was unlikely any fences were included within this reach, due to the flood damage. Mr. Hunt mentioned that fences are rarely included in FEMA models because there is the understanding that they will fall down during a flood event.

Mr. Johansen noted that one of the post-flood photos he provided to the Board shows that the fence did not wash away as there is a section by the bridge. He mentioned that during the flood, the fence came up against the outhouse and debris from upstream caught on the fence and created a debris wall which he said caused the water to go around onto the road, thus saving the cabin from substantial damage. He also said that he would be happy to modify the fence to how the Board prescribes.

Mr. Johansen then asked about approval for the deck if it could meet a no-rise condition. Mr. Hunt mentioned that the PE Mr. Johansen hires to perform the no-rise analysis may be able to find a method to convincingly demonstrate a no-rise without use of a model (although a model may be required), he could bring that back to the Board to see if they could approve the expanded deck.

Mr. Koch suggested the fence and expanded deck variances be separated. He asked Mr. Traff whether he wanted the fence item to come back to the Board for review or if it could be administrative. Mr. Traff responded that it could be administrative.

Mr. Koch moved to approve a variance for retaining the existing fence with the stipulation the applicant brings back a design for review and is acceptable to County staff showing that it is breakaway and tethered so as not to create an obstruction in the floodway. Seconded by Mr. Hunt. Motion passed 5-0.

Mr. Thornton made a motion to deny the variance for the expanded deck as written. Ms. Ervin-Blankenheim seconded.

There was a discussion on whether to table or deny the variance request. Mr. Thornton said the wording in this variance request is not something the Board would ever accept, so it sets a precedent of not approving a variance, when the applicant has the chance to do additional analysis and return to the board with another request. There was discussion of administrative logistics for both options, including when the countdown starts for removal of the expanded deck. Staff explained that Code Compliance is working on this case and they are willing to give more leeway on the timeline if the applicant is working with staff and the process is in motion. However, if it is not done within a specified amount of time Code Compliance will not wait. Mr. Hunt mentioned that the Board needs to set a timeline. Ms. Ervin-Blankenheim also said that there should be a timeline and that the Board would reconsider the request with future additional evidence.

Mr. Koch suggested that once the Board denies something, there is no control of the timing whereas if it is tabled, a timeline is given by the Board. If the applicant does not resubmit requested information within the timeframe, the application is automatically denied. He suggested revising the motion to clearly state that the Board cannot approve what appears to be an obstruction within the floodway without documentation that demonstrates a no-rise condition; therefore, the Board is tabling this issue

to wait for information that would document a no-rise and that we would have that information back within whatever timeframe the Board decides. He said that way the Board makes it clear for the future cases that the Board can't allow that to happen. He also said the Board can table this application because the applicant is going to try to bring in information that demonstrates a no-rise condition.

Mr. Thornton withdrew his motion.

Mr. Oberlander noted that there are no PE stamped materials with the variance application nor is there documentation of a no-rise condition.

Mr. Oberlander moved that the Board table the variance request for the expanded deck for six months pending additional information showing a no-rise condition from the new construction.

Mr. Hunt amended it to require a Professional Engineer's stamp. Mr. Oberlander seconded.

Mr. Koch amended the motion to add "the Board cannot approve what appears to be an obstruction within the floodway without documentation that demonstrates no-rise so the variance request is being tabled" at the beginning of the motion. Mr. Oberlander seconded.

Amended motion - The Board cannot approve what appears to be an obstruction within the floodway without documentation that demonstrates no-rise so the variance request for the deck is being tabled for 6 months pending additional information showing no-rise from the new construction stamped by a professional engineer. Seconded by Ms. Ervin-Blankenheim. Motion passed 5-0.

Mr. Thornton mentioned there should be a six-month time limit on providing fence design documentation to the staff and said it was up to the County to put a timeline on construction. There was agreement from all Board members on this timeline. The deadline for submittal of both approved motions is February 28, 2020.

Estes Valley Short-Term Rentals Discussion Item

Mr. Traff provided an explanation of the floodplain issues related to short-term rental (STR) properties in the Estes Valley Planning Area as a result of new building codes that went into effect on May 1, 2016. Many of the structures have been a STR historically and some are within floodway which is not an allowed use within the floodway. Staff is requiring applicants with STR in the floodway to provide documentation of historical STR use to relative to adoption of the regulatory floodway the Board for the variance application. There will be more applications in the future when the County starts regulating change of use to STR on September 1.

Mr. Thornton moved to approve the minutes from the May 23, 2019, Board meeting. Mr. Koch seconded the motion. Motion passed 3-0.