



SHERMAN CRAIG
Chairman

TERRY MARTINO
Executive Director

Draft Minutes
Regulatory Programs Committee
July 13, 2017 Agency Meeting

MINUTES OF THE REGULATORY PROGRAMS COMMITTEE MEETING July 13, 2017

The Committee meeting convened at approximately 11:15 a.m.

Regulatory Programs Committee Members Present

Arthur Lussi, John Ernst, Daniel Wilt, Lynn Mahoney, Barbara Rice.

Other Members and Designees Present

Robert Stegemann, Bradley Austin, Chad Dawson, Sherman Craig and Fred Monroe, LGRB.

Agency Staff Present

Terry Martino, James Townsend, Richard Weber, Paul VanCott, Jennifer Hubbard, Sarah Reynolds, Ariel Lynch, Shaun LaLonde, Colleen Parker, Suzanne McSherry.

Approval of Draft Committee Minutes for May 2017

A motion to approve the draft committee minutes was made by Mr. Ernst and was seconded by Mr. Wilt. All were in favor.

Deputy Director Report

Richard Weber briefly reviewed the division's reports. Mr. Weber also reviewed two variances he would like delegated for his approval. The first variance involves a retaining wall within a recreational river area. Mr. Ernst asked if this was an unusual request. Mr. Weber responded no; he added that the use of rip rap made up of natural stone and plantings was suggested due to the energy of the river. Mr. Stegemann commented that this was consistent with the approach taken by FEMA in potential flood areas.

The second variance for Director approval proposes replacement of a single family dwelling on Lake George within the same footprint. Mr. Lussi asked if the proposed single family dwelling will be located within the same footprint, why was there a need for the applicant to request a variance. Mr. Weber responded that the replacement single family dwelling will be greater in height by 6 ½ feet. Mr. Craig asked if the applicant considered expanding the dwelling backwards. Mr. Weber responded that because the

footprint was the same as the existing footprint, staff did not assess going backwards with the replacement dwelling. Mr. Weber stated that if any public comment is received on either of these proposals, staff will bring them to the Board for their review and approval.

General Permit 2017G-1, Access to and Replacement of Utility Poles in Wetlands

Mr. Weber reviewed General Permit GP2017G-1- Access to and Replacement of Utility Poles in Wetlands. He stated that this is a renewal of the previous General Permit GP 2014G-2 which had an expiration date. He stated that the prior General Permit 2014G-2 has worked well with wetland protections built into it and conditions which require compliance reporting. He noted that a public comment period has been held. One comment letter was received generally supporting the new General Permit. Staff recommendation is for approval. Mr. Lussi noted that the comment letter received indicated that if any abuse such as ATV use occurs, it should be included in the annual report provided by applicant. Mr. Craig then asked if there is a process to update best management practices in the General Permits if they do not have an expiration date. Mr. Weber responded that if staff begin to see trends, they would naturally come back to the Board to address any change in use of the General Permit.

Mr. Lussi called for a motion to approve the General Permit. Ms. Rice moved and was seconded by Mr. Wilt. All were in favor.

Variance Amendment, Camp Majano, P2016-0100A

Mr. Craig sat on the Committee as Chair for this project. Mr. Lussi recused himself and left the room.

Ms. Lynch presented the property history since the June 2017 Agency meeting. She introduced the applicant, Christina Lussi. She then reviewed the amendment request which is to construct an additional 100 square foot deck and add caissons and tiebacks to support the two decks approved by Agency Order P2016-100.

Ms. Lynch stated that staff is requesting Board advice as to whether the request is a material change and if additional information is needed from the applicant to assess potential impacts from the proposal.

Mr. Craig asked how many of these types of requests have occurred since the 2008 regulation change. Mr. Weber responded that it is unusual for an applicant to request an amendment to a variance that has been granted. He noted that in this case, the question is whether a new structure is being proposed or whether a non-material change is being proposed. Mr. Weber noted that in two prior cases that involved material expansions, new variance requests were required by the Agency.

Mr. Craig stated that variance law does require that any type of expansion be subject to a new variance. Mr. Craig also stated that in this new proposal he felt that the deck

should be separate from the supporting caissons. Mr. Stegemann stated this is a variance following another variance with the same questions being asked with no additional burden of review. Mr. Townsend responded that the material/nonmaterial discussion is important. He added that as the Chairman stated earlier, traditional zoning law would hold the addition of the deck as a new structure. The Board is being asked about materiality. Whether the caissons are considered a material or nonmaterial change to the variance already approved by the Board is for the Board to decide. A material change would be recognized as a new variance which would require all of the steps taken in the original variance review such as analysis, public hearings, etc.

Mr. Wilt asked if adding the deck creates additional non-conformance. Mr. Weber responded that if it requires a variance, it is considered nonconforming. Mr. Townsend added that the addition of the deck is a new structure which requires a variance, but the question is whether it is considered a material or non-material change to the project.

Dr. Dawson stated that he believed more structural support would be considered a non-material change but the addition of a deck should be considered a material change.

Mr. Ernst concurred with Dr. Dawson. Mr. Austin asked what the environmental impact of the proposal is. Ms. Lynch and Mr. Townsend responded that staff have not analyzed the potential environmental impacts of the new proposal as staff are not providing any recommendation to the Board but rather are seeking direction from the Board as to whether the proposal is considered a material change.

Mr. Stegemann asked if an Article 15 permit was required from DEC for the caissons. Ms. Lynch responded no, that the DEC stated the caissons did not require a permit.

Mr. Craig asked if the Army Corps of Engineers would have any concerns. Ms. Lynch responded they did not have any issues with the initial proposal.

Mr. Stegemann asked if there were any safety concerns associated with the tiebacks. Ms. Lynch responded that the applicant stated that steel supports connecting the caissons to the building would improve the safety of the deck located above.

Dr. Dawson noted that the details of the proposal are unknown and speculation should be avoided. He added that he believes the new proposal is a material change and additional information is needed from the applicant.

Ms. Mahoney stated that she believed the additional caissons and tiebacks were for safety purposes at the recommendation of the applicant's engineer to protect the structure during the winter months from shifting ice. She added that her understanding is that the addition of the new deck is to protect the caissons. Ms. Lynch then read from the applicant's June 27, 2017 letter requesting the new proposal.

Mr. Craig asked if the applicants could come back for approval of the deck in the future. Staff responded yes.

Mr. Craig then called for a motion. Mr. Ernst moved that the structural elements could be part of an amendment to the original variance and not considered a material change but the decking should be considered a material change to the original variance. Ms. Rice seconded the motion. All were in favor.

Old Business

None

New Business

None

The meeting was adjourned at approximately 12:10 p.m.