



TOWN OF POMFRET, VERMONT

ZONING BOARD OF ADJUSTMENT

June 5, 2024

VIA ELECTRONIC MAIL

Tarrant, Gillies & Shems, LLP
44 East State Street
Montpelier, Vermont 05602
Attention: David K. Mears, Esq.
david@tarrantgillies.com

Re: Reconsideration Request, Application for Zoning Permit No. ZP24-04

Dear David,

Thank you and the DeFoor's for your time Monday morning. I received and forwarded to the Zoning Board of Adjustment (ZBA) Cara's May 25 email, which is attached for reference. I also discussed with several ZBA members the substance of Cara's June 3 email, also attached for reference. The ZBA deemed these communications collectively to be a request for reconsideration of its May 8 decision regarding the DeFoor's Application for Zoning Permit No. ZP24-04.

This letter is to inform you that pursuant to 24 V.S.A 4470(a) and Section 6.7.1 of the Pomfret Zoning Ordinance, the ZBA finds that the May 25 and June 3 emails do not present new material facts or a substantial change of conditions or circumstances that warrant reconsideration.

The ZBA appreciates this is not the hoped for outcome but feels that given the recent history of flooding emergencies in Vermont, it is especially important that all new development be consistent with Pomfret's Flood Hazard Area Regulations.

For the Zoning Board of Adjustment,

Benjamin Brickner, chair

Cc: Becky Fielder, Pomfret Town Clerk, *via email to clerk@pomfretvt.us*
Karen Osnoe, Pomfret Zoning Administrator, *via email to karen.hewitt@pomfretvt.us*

Attachments (2)

Additional information regarding the DeFoor Bridge Proposal

Cara DeFoor <[REDACTED]>

Sat, May 25, 2024 at 11:31 AM

To: Benjamin Brickner <benjamin.brickner@pomfretvt.us>

Cc: "jon@harringtoncivilengineers.com" <jon@harringtoncivilengineers.com>, Cyrus Benoit <cyrus@arborscapevt.com>, Joseph DeFoor <[REDACTED]>, SK Burgess <[REDACTED]>, Shaun Pickett <[REDACTED]>

Ben,

Please see Jon Harrington's email below. It is our hope that this additional information provides sufficient grounds for reconsidering the boards' denial of our bridge proposal. We intend to work with Jon and Cy to exhaust all reasonable possibilities of our two pronged goal:

1. To save the Teago Covered Bridge as a pedestrian crossing. And
2. To provide emergency vehicle access (and other large equipment/vehicles) to our home.

Additionally I am attaching the evaluation of the Covered Bridge conducted in May 2021 by Jan Lewandoski, Restoration and Traditional Building, Greensboro Bend VT. Jan was recommended to us by The VT Covered Bridge Society and listed as an expert by The Preservation Trust of VT. With his multiple decades of proven success in the field of historic covered bridge restoration, he is renowned as both a subject matter expert and builder. Please see Jan's attached bio and evaluation where he proposes what would be required to restore the Teago Bridge.

It's important to point out that we decided not to pursue Lewandoski's proposal since it would only allow for continued usage of the bridge by light vehicular traffic. Due to size constraints, there was no way to restore the bridge so as to allow usage by emergency vehicles and the like. The combined costs of his proposed restoration project, which would also entail a temporary bridge, simply did not justify a partial fix.

Lastly, in addition to cost constraints, safety and liability concerns behoove us to progress in a timely way. Before going under contract on our property in Oct 2019, we conducted an informal inspection of the covered bridge and were assured that it was safe for light vehicular traffic. We closed on our property during the first week of April 2020, and in spite of COVID shut down constraints, we began our due diligence to obtain a more official assessment of the covered bridge. Through Jan's May 2021 evaluation, we found out that the steel beams that had been installed by the previous owner were carrying all the weight of the bridge and were actually causing failures with the original timber frame structure, the bottom cords of the trusses in particular. Also, some rot had begun to take place.

For the past four years, we have sought contractors to help us find solutions. During the summer of 2022, Cy Benoit emerged as the most competent choice for us. He agreed to work on our project and was able to get us on his schedule for last summer, 2023. The extreme flooding of last July pushed our project to this summer, 2024. With Jon Harrington's engineering expertise and the state permit in place, we thought we were good to go. Now that we understand the ZBA reasoning for denying our initial proposal, we are hoping to immediately submit new information that hopefully will allow for a variance such that work might still commence this summer. After years of extenuating circumstances and no official new knowledge on the current condition of the covered bridge, time is of the essence. We are in a predicament where costs and time constraints require decisive and relatively immediate action.

Again, our overriding hope is to revisit the ZBA board with new information that clarifies why our project meets the criteria for a variance. If we are unable to clarify a path for the ZBA to approve, we are willing to take reasonable next steps. We will seek initial legal counsel to explore whether an appeal to the superior court is likely to allow for a new decision. In

other words, we'll find out whether the superior court has authority to consider reasons (historic landmark preservation) other than simple land use standards. We have already spent close to \$10k on planning for its preservation while meeting our needs as homeowners. Clearly, we are serious about our hopes to preserve the covered bridge and sickened by the idea of potentially dismantling it. We are still willing to spend limited additional resources on an appeals process. But regrettably, if the potential approval seems unlikely to succeed in time for implementing a solution this summer, we will be forced to give up.

Thanks for your consideration. We don't blame anyone for this unfortunate scenario and appreciate all of your help.

Sincerely,

Cara and Joe DeFoor

Sent from [Mail](#) for Windows

From: jon@harringtoncivilengineers.com
Sent: Friday, May 24, 2024 6:42 AM
To: [Cara DeFoor](#); [Joseph DeFoor](#)
Cc: [Cyrus Benoit](#)
Subject: RE: DeFoor bridge

Joe and Cara,

This response is intended for just the three of you in case you want to continue discussions internally or appeal, but I think you could share with the town zoning officials if you feel appropriate.

I have read the zoning board decision along with a brief phone conversation with Ben Brickner yesterday and have a better understanding of the Pomfret zoning board review and decision for your project. The zoning board decision is in my opinion subjective in nature and based on interpretation of the variance, in which I feel that I or anybody could make a case against and could not have been foreseen going into the town zoning review process.

I can think of two other similar projects that I worked on in Town where the driveway access is in the flood plain and bridge isn't. The one difference being your project already has a bridge. But can it be "reasonably" used? If it is indeed structurally deficient for emergency vehicles or larger vehicles, then I feel that one could argue not. It is common for driveway accesses and even some town highway bridge approaches to be lower than the bridge and in my opinion is good engineering practice to design as such in certain situations. The lower approach gives the water a place to go without washing out the bridge in the event of a backup due to obstruction, or a storm greater than a 100-year storm or higher intensity storms like the storms we seem to see more and more of in recent years. I can point to other residential driveways and town highway locations that are constructed in this manner. I can say that in your situation, it is very unlikely during a storm event in this location that the driveway would wash out given the velocities across the field there would be low. The worst that would happen is the water would rise up approximately 12 to 18 inches over a relatively short stretch of your driveway for a relatively short duration during the flood and then recede with no damage to the driveway similar to what it does currently (see last point below).

That said, if you did want to proceed with addressing the zoning boards concerns via requesting a reconsideration or reapplying for the permit, some options to possibly consider are as follows:

1. Raise the driveway above the BFE and allow water to pass underneath by constructing a raised concrete slab, low profile aluminum arch, or potentially multiple culverts under the new driveway approach. This scenario could be modeled in Hec Ras to demonstrate no increase to BFE, as was done for the current plan
2. Increase the span of the current bridge and increase capacity in the stream channel itself. If this is considered, we may have to investigate removing the existing covered bridge abutments and increasing the span as the covered bridge span is currently only 35 feet, creating a pinch point in the stream and I believe this affects the BFE elevation over the driveway. Could the existing bridge abutments be removed to better conform with stream width, span lengthened, wooden ramps added to allow for pedestrian access?
3. Consider getting a second opinion on the covered bridge? I'm not familiar with the details of the evaluations that have been done on the covered bridge so this may not make sense. I would suggest engaging a Vermont licensed structural engineer to evaluate the bridge and offer their opinion on potential renovations to the covered bridge to accommodate larger vehicles. If renovation is not possible and the bridge is structurally deficient, a licensed engineer's opinion may carry more weight with the zoning board when it comes to "reasonable" use.
4. I will point out that the proposed driveway is no different than the condition that presently exists, since the existing approach to the covered bridge and likely portions of the covered bridge superstructure itself is under the calculated BFE. This point is contrary to the zoning decision which states that the existing driveway is above the BFE. So therefore, the new driveway location in my view would not involve any "increased erosion or flooding or "additional threats to public safety" mentioned in the variance language. This may be a point to follow up on with the Board for reconsideration.

The above suggestions are just my opinion, I cannot guarantee local permit approval. If you did want to proceed with addressing the Board concerns with suggested updates above, I could develop a preliminary plan, run it by both of you and Cy, then reach out to Karen Osnoe or possibly Ben Brickner if appropriate to get their input on the technical aspects before making a formal submittal.

Please let me know if you have any questions.

Regards,

Jon

Jonathan C. Harrington, P.E.
Harrington Civil Engineers, Inc.
P.O. Box 283
North Pomfret VT 05053

office: 802-457-1299
cell: 802-296-1924

Office Location:

[7868 Pomfret Road](#)

North Pomfret, VT

www.harringtoncivilengineers.com

FW: Please send evaluation to our attorney, David Mears

1 message

Cara DeFoor <[REDACTED]>

Mon, Jun 3, 2024 at 11:06 AM

To: Benjamin Brickner <benjamin.brickner@pomfretvt.us>, Karen Hewitt Osnoe <Karen.hewitt@pomfretvt.us>, David Mears <david@tarrantgillies.com>, Joseph DeFoor <[REDACTED]>

Please see attached evaluation showing that the bottom of current covered bridge is at 718 which is below BFE. Again, this is the new information for the ZBA.

Thanks!

Cara

Sent from [Mail](#) for Windows

From: jon@harringtoncivilengineers.com

Sent: Wednesday, May 29, 2024 9:20 PM

To: [Cara DeFoor](#)

Cc: [David Mears](#); [Joseph DeFoor](#)

Subject: RE: Please send evaluation to our attorney, David Mears

Hi again – apologies I just realized the measurements for the driveway lengths are off in my markup below since I had assumed the wrong scale. The point is there is slightly more existing driveway under the calculated BFE than with the proposed driveway. I'd be happy to provide more detailed infoamtion if that would help. Thanks. Jon

From: jon@harringtoncivilengineers.com <jon@harringtoncivilengineers.com>

Sent: Wednesday, May 29, 2024 8:40 PM

To: 'Cara DeFoor' <[REDACTED]>

Cc: 'David Mears' <david@tarrantgillies.com>; 'Joseph DeFoor' <[REDACTED]>

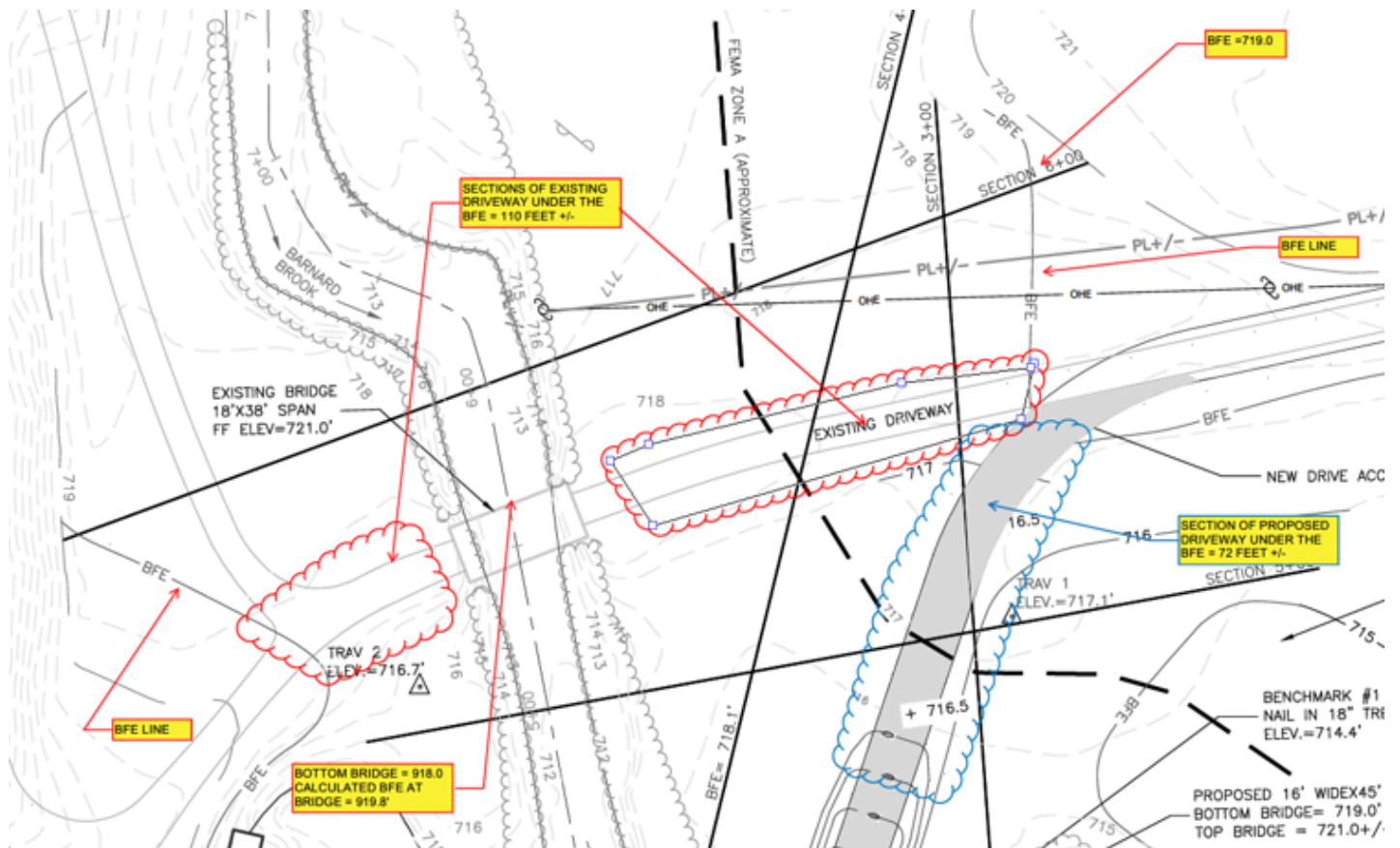
Subject: RE: Please send evaluation to our attorney, David Mears

Hi Cara,

Thanks for the update. We had a nice weekend, thank you, weather was gorgeous! Hope you and your family had a nice Memorial Day weekend as well.

I think you made a good decision proceeding with legal counsel for this application. I can be available to provide engineering support to the request for reconsideration.

Below is a snippet of the permit review plans, with my markups to demonstrate existing driveway (clouded in red) versus proposed driveway segment (clouded in blue) under the BFE. This appears to contrast with the information provided in the decision. I will point out that the proposed alignment takes advantage of the natural rise in grade above BFE on the south bridge approach, so that unlike the current bridge, only one approach is under the BFE during a base flood event.



Please let me know if you have any questions. Thanks.

Jon

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