



CITY OF ARANSAS PASS

AGENDA MEMORANDUM
for the City Council Meeting of April 16, 2018

Date: April 13, 2018
To: Honorable Mayor and Council
From: Katherine A. Comeaux, CFM

Consider and act text on a request from Mary Ann Heimann for a variance on floodplain regulations.

PURPOSE:

To consider the request of Mary Ann Heimann for a variance from the requirements of City of Aransas Pass Code of Ordinances, Article VIII – Flood Damage Prevention.

BACKGROUND AND FINDINGS:

The request for a variance for permitting in a Special Flood Hazard Zone by Mary Ann Heimann for South Bay Marina was brought before City Council on January 16, 2018, at which time the City Council requested engineered plans for a variance. At this time, the variance request is being brought back before Council in order to be considered as hardship on the basis that South Bay Marina is functionally dependent on its proximity to water.

A RECAP:

South Bay Marina (Legal Description: Lot 1, South Bay Marina, Aransas Pass, Nueces County), located on the causeway at 1950 HWY 361, was destroyed by Hurricane Harvey on August 25, 2017.

Under FEMA and NFIP policy, a building that is substantially damaged must be brought up to current codes and standards in order to be repaired or rebuilt. “Substantial

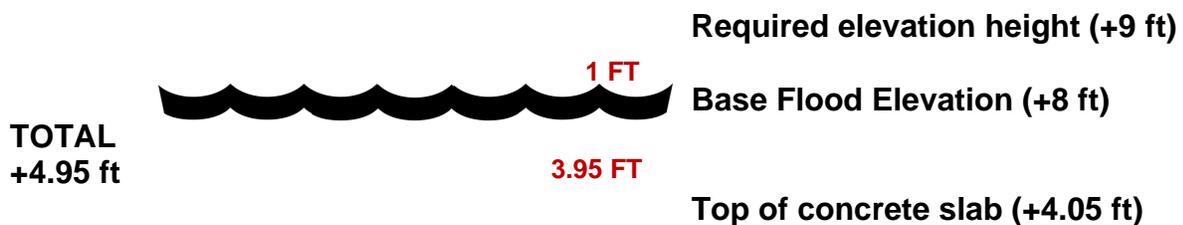
damage” is defined as damage of any original sustained by a building when the cost of restoring the building to its pre-damaged condition would equal or exceed 50% of the market value of the building before the damage occurred. The damage to Ms. Heimann’s property is considered 100% due to the complete destruction of the structure.

South Bay Marina is located in an A11 Flood Zone as per FIRM Panel 485464-0230D (Attachment B). An A11 Flood Zone is defined as an area of special flood hazard as per the City of Aransas Pass Code of Ordinances, Chapter 5 – Building and Construction, Article VIII. – Flood Damage Prevention, Section 5-144. Because South Bay Marina is located in a special flood hazard zone, the City’s Flood Damage Prevention Ordinance requires that it be either elevated to one foot about the Base Flood Elevation level or by combination elevated and dry flood-proofed to the same elevation.

Ms. Heimann procured an elevation certificate from Griffith & Brundrett Surveyors that establishes the top of the existing slab is at +4.05 ft. (Attachment A). The elevation certificate also states that the Base Flood Elevation level is at +8 ft. After factoring in the City’s freeboard requirement, that means that the required level of elevation and/or floodproofing must be at +4.95 ft.

Base Flood Elevation (BFE)	Top of Slab	Freeboard (Required Elevation above BFE)	Total Elevation Needed
+8 feet	+4.05 feet	+1 foot	+4.95

*Elevations are based on the Bench Mark Tidal #2, Elevation +9.971, U.S.C. & G.S. Datum



LOCAL GOVERNMENT AUTHORITY TO GRANT VARIANCES

The Flood Damage Prevention Ordinance, Section 5-125, outlines the following considerations for granting a variance on floodplain regulations:

- “Considerations for granting variance:
 - (2) Variances shall only be issued upon:
 - a. Showing a good and sufficient cause;

- b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.”

CFR REQUIREMENTS FOR VARIANCES

Cities and counties that participate in the National Flood Insurance Program (NFIP) in order to allow residents access to federally-subsidized flood insurance are allowed to grant variances through their elected officials. Because variances on floodplain regulations may expose insurable property to a higher flood risk, all variances granted by local governments are evaluated by FEMA to determine whether or not the variance is consistent with sound floodplain management standards. Once a variance is granted, the documentation and justifications for that variance must be sent for FEMA review for compliance with the CFR, or the Code of Federal Regulations.

Variances in general are discouraged due to the potential of resulting NFIP-participation probation and/or suspension, which could limit or eliminate access to federally-subsidized flood insurance for a community. In order to avoid this, variances should be considered carefully and in conjunction with Section 60.6 of the Code of Federal Regulations:

44 CFR 60.6 Variances and exceptions

(a) The Federal Insurance Administrator does not set forth absolute criteria for granting variances from the criteria set forth in §§ 60.3, 60.4, and 60.5. The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant's hardships, shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one-half acre (as set forth in paragraph (a)(2) of this section), deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. The Federal Insurance Administrator may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Federal Insurance Administrator may take appropriate action under § 59.24(b) of this subchapter. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve

the historic character and design of the structure. Procedures for the granting of variances by a community are as follows:

(1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(2) Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (a) (3), (4), (5) and (6) of this section;

(3) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(5) A community shall notify the applicant in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in paragraph (a)(6) of this section; and

(6) A community shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to the Federal Insurance Administrator.

(7) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria of paragraphs (a)(1) through (a)(4) of this section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

South Bay Marina Business Operations / Functionally dependent hardship

For consideration of the City Council:

Applicant's arguments for functional dependency on current location:

- South Bay Marina is a bait shop, for which a majority (over 90%) of the bait purchased as inventory is brought in by boat. Each container of bait, mostly shrimp, contains on average 100 pounds of bait as well as 100 pounds or more of ice. The containers are delivered to the bait shop by boat, unloaded on the docks, and wheeled or carried directly into the bait shop. While the proposed building for South Bay Marina would not be attached to the docks, the proximity is necessary for the purposes of unloading inventory. Because of this, if the building was elevated to one foot above the base flood elevation level the docks would need to be elevated as well, which would make the docks inaccessible to water crafts.
- South Bay Marina also sells bait directly off of the docks to fishermen already on the water.
- A portion of the bait sold at South Bay Marina is caught by the owners at their business location.

Other arguments for variance justification based on the site-specific, physical characteristics of the property:

- Property is not located within a designated regulatory floodway, and because of its location on the causeway would not cause increased flood levels or an increase in flood discharge to surrounding properties.
- Although the total acreage for this parcel is 4.68 acres, the total amount of acreage for the developable, commercial land is 17,220 square feet, or .3953 acres. The rest of the property is in the water and is considered by the Nueces County Appraisal District as "waste/wet lands."

ALTERNATIVES:

Denying requested variance.

RECOMMENDATION:

Staff recommends following federal requirements. If variance is granted, staff recommends requiring a study be conducted to show that the variance for development would not result in increased flood levels.

ATTACHED DOCUMENTATION:

ATTACHMENT A - Elevation Certificate

ATTACHMENT B - FIRMETTE 485464 0230 D
ATTACHMENT C - USACE Documents