



REQUEST FOR A VARIANCE (WETLANDS) - APPEAL

FOR: Encroaching 50' wetlands setback
WHERE: West end of W 5000 S
PREPARED FOR: Board of County Commissioners
Public Hearing of April 14, 2025 & April 28, 2025

LANDOWNER: Brian Fraiz

APPLICANT: Tim Grimes

OVERVIEW: The applicant is requesting an appeal of the previous denial of a variance by the Planning and Zoning Commission to develop a home, guesthouse, and driveway as well as to conduct mitigation work within the 50' setback from delineated wetlands.

The property is currently in a conservation easement with the Teton Regional Land Trust. This conservation easement has a building envelope in the NE corner that all development needs to occur within. An Aquatic Resources Inventory was completed for the property on October 6, 2022. The inventory identified areas of uplands both within and outside of the building envelope. A Nationwide Permit No. 29 was granted on December 5, 2023 with an expiration date of March 14th, 2026. The proposed driveway will encroach the 50' setback from delineated wetlands. The proposed single-family home, guesthouse, and associated improvements would be built within the delineated wetlands.

APPLICABLE COUNTY CODE: Land Development Code, Sections 4-9, 4-15, 5-2-3, and 5-4-2.

PARCEL NUMBER: RP04N45E290050

LEGAL DESCRIPTION: NE4NE4 SEC 29 T4N R45E CONSERVATION EASEMENT

ZONING DISTRICT: LA-35

PROPERTY SIZE: 40 acres

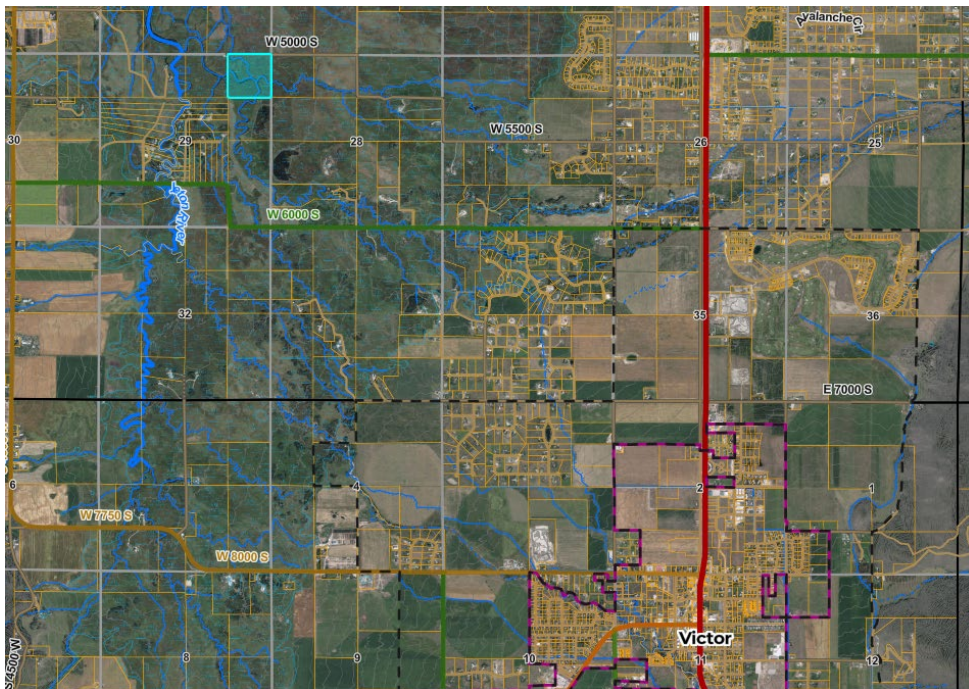


Figure 1. Vicinity Map. Subject Parcel Highlighted Blue. NW of Victor.

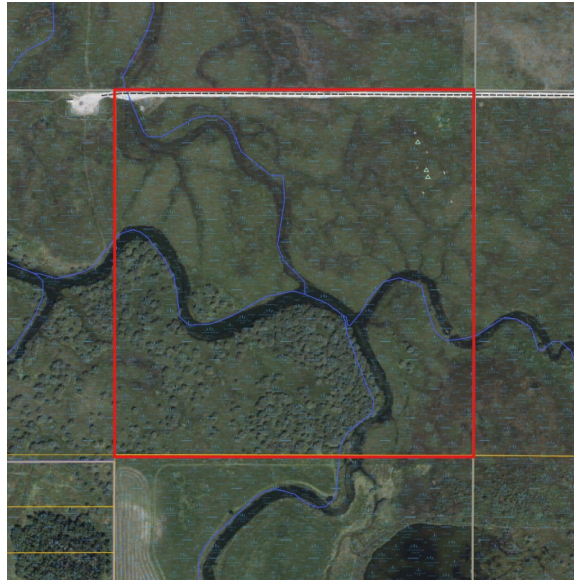


Figure 2. Aerial Image

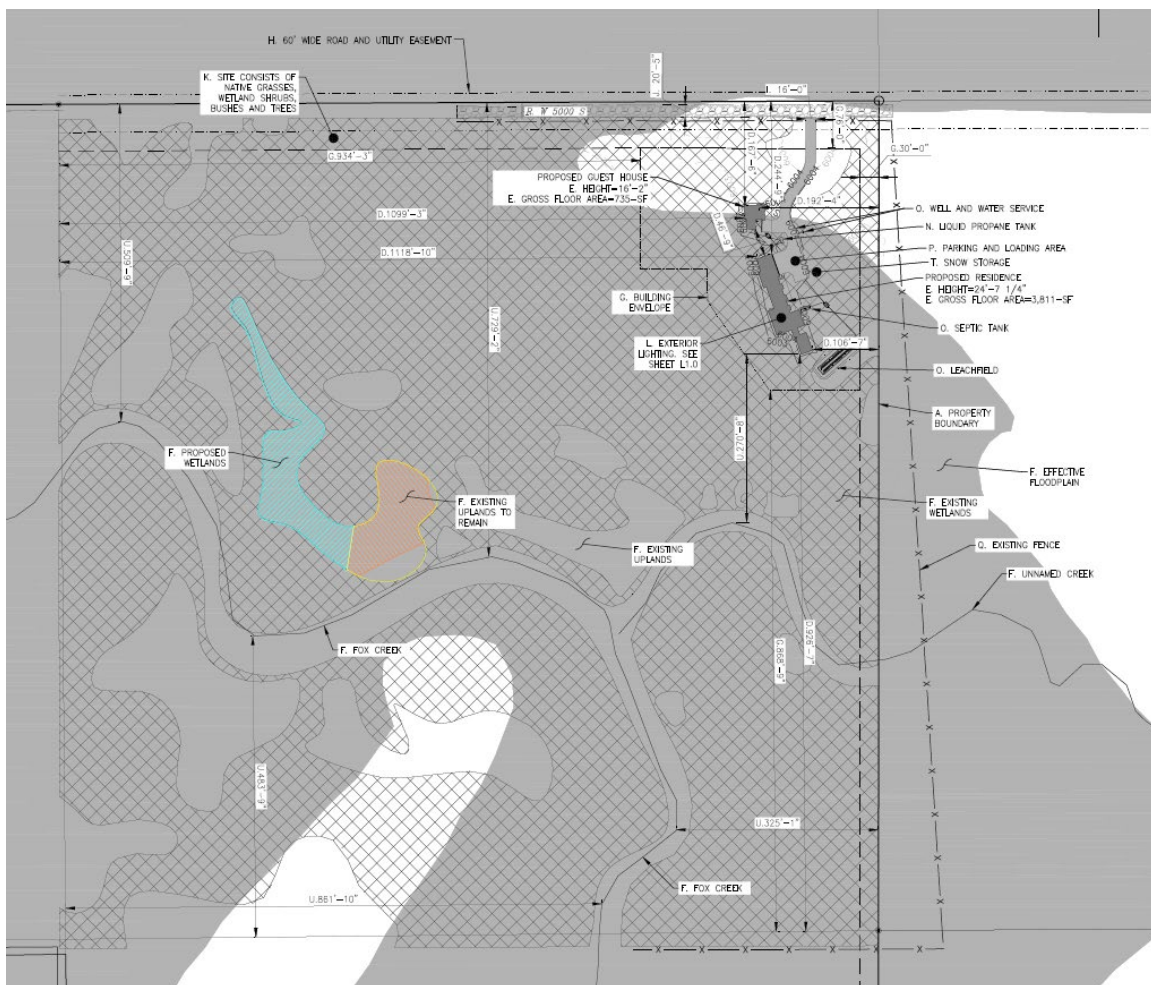


Figure 3. Site Plan



Map of Wetland Features delineated 2022

Figure 4. Wetland Delineation (green hatch pattern are wetlands)

A-1) Mitigation Site Plan

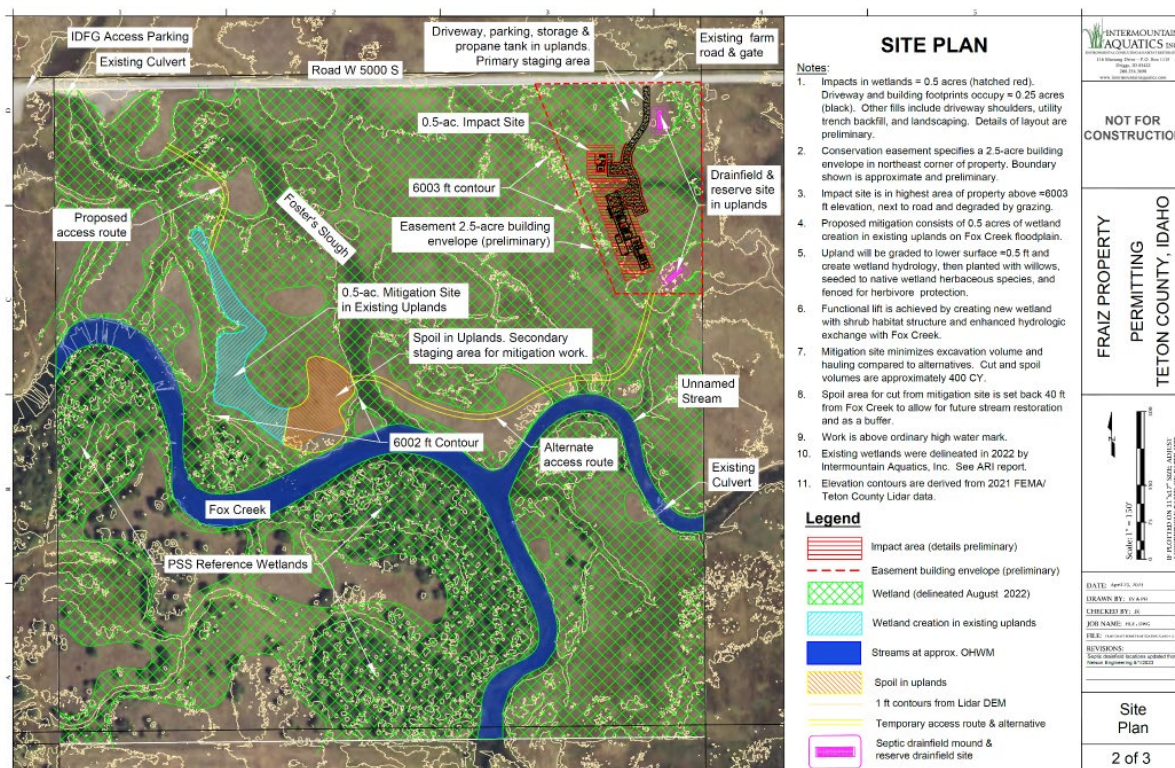


Figure 5. Mitigation Site Plan

4-15 Appeals and Reconsideration

A. Applicability

1. In addition to the remedies described in Section 1-7 of the LDC, this section provides the remedy of appeal from and requests for reconsideration of final decisions made by the Administrator, PZC, BoCC, or other County official.
2. An applicant or an affected person may avail themselves of these administrative remedies in accordance with this section.
3. An appeal of a decision will be reviewed by the PZC or BoCC, as specified in the table in Section 4-1.
The table indicates that the PZC can make decisions on requests for a variance and the BoCC can consider appeals to those decisions.
4. Appeals and requests for reconsideration must be filed with the Administrator within fourteen (14) calendar days of the date of a written decision.
The PZC written decision was approved on February 11, 2025. An application for the appeal was received on February 24, 2025.
5. Any applicant or affected person seeking judicial review of a written decision must first request reconsideration of the final decision as provided here.

B. Submittals

1. A notice of appeal or request for reconsideration must be filed on a completed application form provided by the Department.
2. The application must include a narrative description of the basis for the appeal or request for reconsideration, including the specific deficiencies of the decision alleged by the applicant or affected person.
The applicant's representative submitted a statement dated February 21, 2025.

C. Notice and Requirements

1. Notice will be provided as required for the decision being Appealed from or being reconsidered.
2. If no notice was required for the original decision, published notice will be provided in a newspaper of general circulation in Teton County, posted at the courthouse, and posted on the County's website at least fifteen (15) days prior to the hearing.

SPECIFIC REQUIREMENTS FOR PUBLIC HEARING NOTICE:

Idaho Code, Title 67, Section 67-6509, 67-6511, 67-6512, and Title 9, Section 3-2-(B-2) of the Teton County Code. The public hearing for the Board of County Commission was duly noticed in the Teton Valley News on March 26th, 2025 and April 2, 2025. A notification was sent via mail to surrounding property owners within a 300-foot buffer area on March 21, 2025. A notice was also posted on the property providing information about the public hearing on April 8th, 2025.

D. Procedures for Appeals and Requests for Reconsideration

1. Following notice and a hearing, as required by law, the reviewing official or body may affirm, reverse or modify the original decision after verification of compliance with applicable procedural and LDC standards.
2. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the completed appeal or request for reconsideration.
3. Where no written decision on a request for reconsideration is issued to the applicant within sixty (60) days of receipt of the completed application, the request for reconsideration is deemed denied, without further action by the applicant or the County.

No other specific criteria is provided for consideration of an appeal. The Board should consider the information from the original application, the review criteria for the specific request for the variance, the information provided from the deliberation and written decision document of the PZC, and the information submitted in the applicant's request for appeal.

The following information was provided in the staff report prepared for the original variance request eventually denied by the PZC. Other relevant materials can be found as attachments to this report.

The Variance request specifically pertains to the following development standards in the Land Development Code:

1. TCC 5-2-3 (B):

- B. Site grading within one hundred (100) feet of the Teton River or wetlands delineated by U.S. Fish and Wildlife National Wetland Inventory boundary, and within fifty (50) feet of all other waterways.

2. TCC 5-4-2 (C)

- C. Setback requirement: all physical development and use is required to be set back from specified resources as shown in Table 7. The area within the setback is defined as the Riparian Buffer.

Table 7. Riparian Buffers

Resource	Setback Distance (A)	Measured From (B)
Teton River	100'	Ordinary high water mark
Stream or Creek	50'	Ordinary high water mark
Wetland 1	100'	U.S. Fish and Wildlife National Wetland Inventory boundary
Wetland 2	50'	Site specific <i>wetland delineation</i> approved by U.S. Army Corps of Engineers
Lake or Pond	50'	Ordinary high water mark

3. TCC 5-4-2 (E)

- E. The following development and activities are prohibited in a Riparian buffer:

1. Construction of physical *development* in a riparian *buffer* except as allowed in Section 5-4-2-D above.
2. Fertilizer, herbicide, and pesticide *application*, except as needed for approved restoration or re-vegetation.
3. Grading that interrupts diffuse flow within the riparian *buffer*.
4. Septic tank drain fields.
5. Driveways and *road* crossings are prohibited unless there is no other alternative in which case driveways shall be not *disturb* more than twenty (20) feet in width and *road* crossings shall bridge the primary *riparian area*.
6. Accessory *structures* are prohibited unless for agricultural purposes if no other alternative exists.

OVERVIEW OF VARIANCE APPROVAL:

9-4: Variances can only be approved for the modification of the bulk and placement requirements of the LDC as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other LDC provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots, as outlined in Idaho State Code 67-6516. Variances are considered through a quasi-judicial process.

Idaho State Code 67-6516 – “A variance shall not be considered a special privilege, but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site and that the variance is not in conflict with public interest.”

Review Criteria	Staff Analysis
1. If the variance application relates to a public school facility, that the subject property is appropriate for development allowed in the proposed Zoning District, including the impacts authorized for review under Idaho Code section 67-6519(3).	Application does not pertain to a public school facility.
2. A literal interpretation of the provisions of the LDC would effectively deprive the applicant of rights commonly enjoyed by other properties of the Zoning District in which the property is located.	A literal interpretation of the LDC standard would not allow development within wetland areas and riparian area setbacks. A 50’ setback would be required along with a wetland delineation.
3. Granting the requested variance will not confer upon the property of the applicant any special privileges that are denied to other properties of the Zoning District in which the property is located.	The variance, if approved, would allow the applicant to build a driveway, single family home, and guest house that would encroach the 50’ setback from the delineated wetlands. As shown, developing in uplands without encroaching on the setbacks would be challenging and more than likely not possible without reducing the home size. There is a conservation easement across the property that includes a building envelope for development.
4. The requested variance will be in harmony with the purpose and intent of the LDC and will not be injurious to the neighborhood or to the general welfare.	The proposal is aligned with the rest of the LDC in that this is the only variance to the regulations requested.
5. The special circumstances are not the result of the actions of the applicant.	The request would not grant a special circumstance that is the result of the applicant. The parcel was created years ago (more than likely before the lot creation policy and subdivision ordinance) without consideration of wetlands or property and access constraints.
6. The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure.	<p>It may be possible to shift the building footprint partially onto the delineated uplands. This would reduce the wetland impacts and would be considered the minimum variance.</p> <p>PZC to review and consider if the requested variance is the minimum variance to make the residential use of the property possible.</p>

7. The variance does not permit a use of land, buildings or structures, which are not permitted by right in the Zoning District or the LDC, including Chapter 5.	All other applicable LDC standards are being met.
8. Granting of the variance is not in conflict with the public interest.	The variance may be in conflict with public interest. PZC to deliberate.
9. The variance does not reduce the lot size below the minimum lot size allowed in the Zoning District, except as provided in section 1-8.	Variance request does not adjust the minimum lot size per the zoning district.

PROJECT BACKGROUND & REVIEW HISTORY

Planning & Zoning Commission Review: The PZC reviewed and continued the application on November 12th, 2024 to obtain legal review. The continued hearing was held on January 14, 2025 at which time the application was denied.

After the continuation on November 12th, 2024, the applicant began the wetland mitigation work without an approved grading and erosion control permit. Staff placed a stop work order on the property. The variance approval does not constitute an approved building permit. The applicant will need to obtain a building permit and grading and erosion control permit before any work may commence.

REVIEW & INTER-AGENCY COMMENTS:

All related documents are attached.

- **US Army Corps of Engineers: Nationwide Permit No.29 (December 5, 2023)**
 - We have determined that your proposed project Fraiz Residence Development is authorized in accordance with Department of the Army (DA) Nationwide Permit (NWP) No. 29: Residential Developments. This project is located within Section 29 of Township 4 North, Range 45 East, near Victor, Teton County, Idaho.
 - Project activities include the discharge of approximately 1770 cubic yards of dirt and gravel fill in 0.5 acres of wetlands considered to be Waters of the United States associated with the creation of a roadway and home site. Additional activities include the installation of a 6500 x 2-foot electric transmission line that will have a temporary impact to 0.3 acres of wetlands. The project also involves the creation of 0.5-acre scrub-shrub wetlands as compensatory mitigation. The mitigation site will be formed through the excavation of upland areas adjacent to wetlands allowing surrounding hydrology to enter the site and the planting and seeding of native hydrophytic vegetation.
- **Intermountain Aquatics: Aquatic Resource Inventory (October 6, 2022)**
 - Wetlands were found throughout the AOI totaling 32.9 acres. Wetlands are roughly two-thirds palustrine emergent sedge meadows north and east of Fox Creek and one-third scrub-shrub wetland concentrated south of Fox Creek. Wetlands are supported by seasonal high groundwater and surface water in Fox Creek and Foster's Slough. Vegetation generally transitions from predominantly FAC to FACW species in the wetlands, to FACW to FACU in the uplands. Sample points that lacked hydrology had a higher prevalence of FACU species. Most of the sample points were characterized by dark loamy soils and many with a lighter-colored

clay layer below at variable depths. Riverine resources on the property include a total of 1776 linear feet of Fox Creek (C1) and 602 linear feet of an unnamed tributary to Fox Creek.

▪ **Intermountain Aquatics: Compensatory Mitigation Plan (April 28, 2023)**

- The Fraiz parcel totals 40 acres and is located 4 miles northwest of Victor in Teton County, Idaho. The landowner plans to build a driveway, single-family residence, and associated improvements. Site development impacts will result in 0.5 acres of fill in wetlands in the northeast corner of the Property. The 0.5-acre impact area consists of low functioning PEM wetlands on higher ground that have been degraded by historic grazing and depend partly on irrigation return flow. The owner plans to mitigate impacts by converting 0.5 acres of uplands to PSS wetland. Impacts and mitigation do not directly involve streams. Existing wetlands are documented in a separate Aquatic Resource Inventory report completed by Intermountain Aquatics, Inc. (IMA) in 2022 and submitted with this Plan and permit application. Other supporting documents include a conservation easement and easement baseline report.

▪ **Teton Regional Land Trust: Foster Deed of Conservation Easement (August 3, 1998)**

- **Purpose:** It is the purpose of the Conservation Easement granted herein to assure that the Property will be retained forever in its natural scenic, and wetlands habitat condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Granters intend that this Conservation Easement will confine the use of the Property to such activities, including, without limitation, natural, wildlife habitat, limited recreational and agricultural, as are not inconsistent with the purpose of this Conservation Easement.
- **3.1:** To reside on the Property and to designate and to develop, in accordance with the provisions of this paragraph 3.1, one "Building Area" as described below, provided that Granters agree that the "Building Area" shall not exceed 5 acres in size and that the following permitted uses and practices and restrictions apply to the "Building Area". Notwithstanding anything in this paragraph to the contrary, all structures permitted hereby shall be located within the "Building Area" defined herein. Granters shall comply with local, state, and federal regulations that deal with building construction, and acquire all appropriate local state and federal building permits. The designated "Building Area" shall be located as described below and as indicated on the accompanying map, Exhibit D, except with the prior written permission of the Trust, which permission shall not be unreasonably withheld.

▪ **Federal Emergency Management Agency: Letter of Map Amendment (January 8, 2024)**

- This document provides the Federal Emergency Management Agency's determination regarding a request for a Letter of Map Amendment for the property described above. Using the information submitted and the effective National Flood Insurance Program map, we have determined the described portion of the property is not located in the SFHA, an area inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood). This document amends the effective NFIP map to remove the subject property from the SFHA located on the effective NFIP map; therefore, the Federal mandatory flood insurance requirement does not apply.

PUBLIC COMMENT:

Staff has received several additional public comments on this application as of April 9th, 2025.

FINDINGS OF FACT:

Brian Fraiz submitted an application on October 4, 2024, for a wetland setback variance for a 40 acre parcel. The PZC reviewed and continued the application on November 12, 2024 to obtain legal review. Once legal review was received, the continuation was scheduled to be heard on January 14, 2025. The PZC then entered deliberation. The commission found that Section 4-9-E review criteria numbers 3 and 6 were not satisfied with the proposal as presented. The Planning & Zoning Commission moved to DENY this variance request based on the review criteria in LDC § 4-9, 5-2-3, and 5-4-2. The PZC written decision was approved on February 11, 2025 and signed on February 13, 2025. On February 24, 2025, the Planning Department received an Appeals and Reconsideration Application.

BOARD OF COUNTY COMMISSIONERS ACTION:

- A. AFFIRM the Planning and Zoning Commission decision to deny the Variance request, having provided the reasons and justifications for the affirmation.
- B. OVERTURN the Planning and Zoning Commission decision to deny Variance request, having provided the reasons and justifications for overturning the decision, thus granting the variance request.
- C. MODIFY the original Planning and Zoning Commissions denial of the Variance request, specifying how the request is modified and providing the reasons and justifications for the modifications to the application request, or adding conditions.
- D. Continue to a future BoCC Public Hearing with reasons given as to the continuation or need for additional information.

MOTIONS:

AFFIRMATION

Having concluded that the Review Criteria of a Variance and other code found in the Teton County Land Development Code, Sections 4-9, 4-15, 5-2-3, and 5-4-2, cannot be satisfied, I move to AFFIRM the Planning and Zoning Commissions Action to DENY the Variance for Brian Fraiz as requested in the application materials submitted October 4th, 2024, for the following reasons:

OVERTURNING

Having concluded that the Review Criteria of a Variance and other code found in the Teton County Land Development Code, Sections 4-9, 4-15, 5-2-3, and 5-4-2, can be satisfied (with the inclusion of the following conditions of approval, (if any)), I move to OVERTURN the Planning and Zoning Commission decision and APPROVE the Variance for Brian Fraiz as requested in the application materials submitted October 4th, 2024 with the following findings:

MODIFICATION

Having Reviewed the Criteria of a Variance and other code found in the Teton County Land Development Code, Sections 4-9, 4-15, 5-2-3, and 5-4-2, I move to MODIFY the Planning and Zoning Commission decision to DENY the variance in the following way and with the following findings:

CONTINUE

Having Reviewed the Criteria for and Appeal and Variance found in the Teton County Land Development Code, Sections 4-9, 5-2-3, and 5-4-2, I move to CONTINUE the Board of County Commissioner's Public Hearing with reasons given as to the continuation or need for additional information to a future date & time.

Prepared by:

Joshua Chase, Planning Administrator, interim

Attachments:

- | | |
|--|---|
| A. Application (2 pages) | J. Letter of Authorization (1 page) |
| B. Narrative (2 pages) | K. Joint Application (4 pages) |
| C. Site Plan (1 page) | L. Public Comment (23 Pages) |
| D. Aquatic Resource Inventory (39 pages) | M. Warranty Deed (2 pages) |
| E. Conservation Easement (26 pages) | N. Stop Work Order (1 page) |
| F. LOMA (2 pages) | O. Spitzer Law Request for Appeal (9 pages) |
| G. Vicinity Map (1 page) | P. Trentadue Public Comment (7 pages) |
| H. Mitigation Plan (32 pages) | Q. Hunstman Publi Comment (1 page) |
| I. NWP (87 pages) | |

End of Staff Report