

TETON COUNTY, IDAHO | Planning & Zoning Commission

Written Decision for the Denial of the Variance Request for Brian Fraiz

This is a written decision on the findings for the denial of the Variance Request for Brian Fraiz under Teton County Land Development ("LDC") adopted August 2, 2022.

APPLICATION DATE: October 4, 2024

APPLICANT: Brian Fraiz

PARCEL: RP04N4E290050 – 40 acres

PROJECT NAME: Fraiz Property – Variance

PURPOSE OF APPLICATION: To request a variance to sections 5-2-3 and 5-4-2 of the Land Development as it relates to wetland area setbacks

Applicable Standards and Criteria for Application Evaluation: Land Development Code (LDC) – Chapters 4 and 5

Procedural Background and Project Summary

Brian Fraiz submitted an application on October 4, 2024, for a wetland setback variance for a 40 acre parcel (RP04N45E290050). The project specifically sought relief from LDC § 5-2-3 Stormwater Management Standards and LDC § 5-4-2 Riparian Buffers. The variance from the setbacks and development standards within wetland buffers would allow the applicant to develop a home, guest home, driveway, and other improvements in the wetlands and encroaching the 50-foot setback from delineated wetlands.

The applicant addressed other issues outside the scope of review for Teton County, specifically including wetland issues and a conservation easement on the property held by a third party. The applicant received the necessary federal and state permitting from the US Army Corps of Engineers, Idaho Department of Water Resources, and the Federal Emergency Management Agency. A wetland delineation was completed for the property by Intermountain Aquatics. The applicant also depicted the conservation easement, which Teton County does not enforce, in conjunction with the planned construction.

On November 12, 2024, the Teton County Planning & Zoning Commission (PZC) held a public hearing for the Variance Request for Brian Fraiz. This hearing was continued to allow PZC to obtain legal review on variance criteria.

HEARING DATES: November 12, 2024 (Continued), and January 14, 2025

NOTICE: The public hearing for the Planning & Zoning Commission was duly noticed in the Teton Valley News on December 25, 2024, and January 1, 2025. A notification was sent via mail to surrounding property owners within a 300-foot buffer area on December 20, 2024. A notice was also posted on the property providing information about the public hearing on December 20, 2024.

Planning and Zoning Commissioners Present: Rebeca Baker, Wade Kaufman, Wyatt Penfold, Tyler Wertenbruch, James Weber, Carl Kohut, and Tom Braun

Applicants and Representatives Present: Brian Fraiz (Applicant); Braden Olson (Nelson Engineering); Jeff Klausmann (Intermountain Aquatics); and Tim Grimes (Houseplant Designs)

Interim County Planning Administrator Jade Krueger and Associate Planner Torin Bjorklund were present.

Staff presented a staff report. The applicant and their representatives presented the application. The public hearing was opened. 4 individuals spoke during public comments (one neutral and three opposed). The applicant was then given time for rebuttal. There were 12 written public comments submitted in advance of the hearing: one neutral and 11 opposed. The oppositions included opinions on the lack of compliance with the LDC, destruction of wildlife habitat, wetland degradation, septic issues, and the overall size of the project.

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.

MOTION

Having concluded that the Review Criteria for a Variance found in Teton County Land Development Code Sections 4-9, 5-2-3, and 5-4-2 cannot be satisfied, the motion was made to DENY the Variance for Brian Fraiz as requested in the application materials submitted October 4, 2024 for the following reasons as stated in paragraphs 6 and 3 of LDC § 4-9-E.

Commissioner Tyler Wertenbruch made the motion; motion was seconded by Commissioner Carl Kohut.

AYES: Rebeca Baker, Tyler Wertenbruch, James Weber, Carl Kohut

NAYES: Wade Kaufman, Wyatt Penfold, Tom Braun

CONCLUSIONS

Having given due consideration to the application and materials presented, and to the review criteria in Teton County Land Development Code 4-9, the Teton County Planning & Zoning Commission hereby makes the following conclusions:

1. The review criteria numbers 3 and 6 in the LDC section 4-9-E for the proposed variance were not satisfied. The application was subsequently denied as presented by the Teton County Planning & Zoning Commission.
 - a. Review Criteria Items not satisfied:
 - 4-9-E.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
 - 4.9.E.6 The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure
 - b. Bases for finding Review Criteria not satisfied:

The PZC did not consider matters related to wetlands or wetlands mitigation, which is not within the scope of the PZC's review of this application. Likewise, the PZC did not consider the conservation easement existing on the subject property, which is a private matter between the landowner (applicant here) and the easement holder (a third party). While the background information relating to these matters was helpful for the PZC to understand, it was only background information and not relevant to the PZC's determination of this application.

Other properties in the same Zoning District as the subject property must also comply with the requirements of LDC § 5-2-3 (regarding Stormwater Management Standards) and LDC § 5-4-2 (regarding Riparian Buffers). The situation of this subject property is not sufficient to distinguish it from other similarly-situated properties in the same Zoning District, such that a variance in this situation as requested by the applicant could only be categorized as a "special privilege[]" that these other properties have not been afforded.

Given the constraints of the 50-foot wetland setback (required by LDC § 5-4-2-C), this application seeks, at points, to almost entirely negate that setback and rely on the sheer quantity of wetland on this property to be sufficient. However, the PZC finds that there may be other options and changes to this design that could request less of a variance than what is sought in this application. Thus, this cannot be considered the minimum variance that makes this proposed use possible.
2. The proper legal requirements for advertisement of the public hearing have been fulfilled as required by Idaho Code, Title 67, Sections 67-6509, 67-6511, and 67-6512, and the Teton Land Development Code Section 4-2-D. The public hearing for the Planning & Zoning Commission was duly noticed in the Teton Valley News on December 25, 2024, and January 1, 2025. A

notification was sent via mail to surrounding property owners within a 300-foot buffer area on December 20, 2024. A notice was also posted on the property providing information about the public hearing on December 20, 2024.

3. The commission indicated that they would like to see a revised plan utilizing more uplands in the development proposal which would meet criteria 4-9-E.6 as the minimum variance required to make the project possible.



Wyatt Penfold

Chair of the Planning and Zoning Commission

2-13-25

Date