



## RECORD OF PROCEEDINGS

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**Meeting of the Planning Commission for the Town of Frisco  
Town Hall, 1 East Main Street  
Thursday, February 20, 2020 at 5:00 P.M.**

**Call to Order:** Andy Stabile, Chair, opened the meeting.

**Roll Call:** Robert Anton Franken, Jason Lederer, Donna Skupien, Andy Stabile, Kelsey Withrow  
Absent: Andy Held and Lina Lesmes

**Minutes:** The February 6, 2020 Planning Commission meeting minutes were approved unanimously.

**Public Comment (non-agenda items):** There were no public comments.

**Agenda Items:**

1. **TABLED FROM FEBRUARY 6, 2020 MEETING - Planning File No. 260-19-VAR:** A public hearing of a Variance Application requesting relief from Section 180-6.7, Water Quality Protection, Frisco Unified Development Code, to allow for a reduction of the 25-foot waterside setback, located at Lots 23-24, Block D, Frisco Townsite. Applicant: Jacob and Rori Miller

Planning Commission Chair, Andy Stabile, opened the Planning Commission meeting and moved that the Planning Commission go into Executive Session pursuant to Colorado Revised Statutes Section 24-6-402(4)(b) in order to receive legal advice from the Town Attorney on specific legal questions.

Motion seconded by Commissioner Franken.

**Vote:**

FRANKEN	YEA
HELD	ABSENT
LEDERER	YEA
LESMES	ABSENT
SKUPIEN	YEA
STABILE	YEA
WITHROW	YEA

***MOTION CARRIED***

Commissioner Stabile dismissed the public to begin the Executive Session for legal advice from the Town Attorney.

For purposes of the record, Thad Renaud, Town Attorney, commenced the Executive Session at 5:03 p.m. pursuant to CRS Section 24-6-402(4)(b). The purpose being for the Planning Commission to receive legal advice on specific legal questions. Mr. Renaud requested the Planning Commission Chair confirm that the specific legal questions concern the degree to which tonight's variance application may or may not implicate the law of regulatory takings under the US Constitution and applicable Supreme Court cases.

Commission Chairman Stabile acknowledged this to be correct.

For that reason all conversation will fall under the attorney client privilege and the Clerk was instructed to stop the recording of this Executive Session.

For purposes of the record, Thad Renaud, Town Attorney, closed the Executive Session at 5:45 p.m. stating that all of the foregoing conversation was protected by attorney client privilege and was not recorded. With that said, the meeting was turned back over to the Chair. The Commission acknowledged with an all in favor.

Commissioner Stabile reconvened the Planning Commission meeting with the public present at which time Bill Gibson, Assistant Community Development Director acknowledged receipt of Public Comments from James McClelland, Larry Jensen, Paul Guglielmo, Edward Balduf, Gregory Bowlin, Derek Goossen, Christopher Reiss, the Galena Street Townhome Association, Peter Dunn, the Windstream Subdivision Owners, and another comment from Paul Gulielmo. Noting that the public comments were distributed to all of the commissioners, they have been posted on the Town's website, and copies are in the back of the room. An additional public comment came in via telephone from Peggy Alexander who lives at 313 Galena St, west of the subject property. Katie Kent, Planner, delivered the comment on behalf of Ms. Alexander who was supportive of the project and after reading the other public comment letters feels that the neighboring homeowners are using this property for their own personal use and further, that the homeowners have a right to build on this property.

Bill Gibson, Assistant Community Development Director, presented the staff report to the Commission stating that the Applicants, Jacob and Rori Miller, are requesting a variance from the provision of the waterside setback standards prescribed by Sub-section 180-6.7.2 of the Frisco Unified Development Code that prohibits soil disturbance within 25 feet of wetlands. Mr. Gibson noted that the subject property has been designated for residential development for no less than six (6) decades and described the unique circumstances of this property including that the wetland setback makes this lot unbuildable in the absence of relief. The applicant is proposing that future development of this lot would comply with all of the codes and the creek setback. Staff is recommending approval of the variance based on the findings in the staff report and Staff recommends a condition that the Applicant file a final plat to create a building envelope to memorialize this variance application.

**Commission questions for staff included:**

- Commissioner Franken requested staff talk about the history of this property. Mr. Gibson stated that the Town obtained the land from the federal government and then sold the property to private ownership as a residentially zoned property continuously for the past 140 years.
- Commissioner Lederer asked staff if the Community Plan provided any guidance. Staff responded that the Community Plan did not address this specifically but is referenced in the staff report.

The Applicant, Jacob Miller, 503 Polar Ct., Silverthorne, introduced himself expressing interest in building a single family residence. Mr. Miller stated that he is willing to re-plat and install a fire hydrant to benefit neighbors and noted he is just asking for reasonable use of a property that has been zoned residential for the past 160 [sic] years.

### **Commission Questions for Applicant included:**

- Commissioner Franken asked if the Applicant had given consideration to different configurations where they might possibly move the buildable area into a slightly different configuration that might disturb the wetlands less. Mr. Jacobs responded that they are considering a helical pier system that would have less impact and also noted that if the lot west of their property gets the Army Corp of Engineers to allow them to fill in their wetland, then the Applicant's property might not even be 25 feet from another wetland. Mr. Franken asked, if the Planning Commission was not comfortable with the amount of variance on the East side, would the applicant be open to a slightly smaller buildable area? Applicant responded that he would be amenable.
- Commissioner Lederer asked for verification of the setbacks. Applicant responded that the lot line setback is 10' but when there is wetlands presence, the setback is 25' from wetlands. Mr. Gibson clarified that what he is hearing is that the Commissioners might be more comfortable with a deviation from a property line setback to help better preserve some existing wetlands as an alternative approach. Commissioner Lederer asked if Applicant had considered requesting a lot line variance instead, putting the buildable envelope closer to the alley. Mr. Jacobs responded no, that seemed like a bigger hurdle.

### **Public comments:**

- Paul Guglielmo, 317D Galena St., Frisco. Mr. Guglielmo thanked the Planning Commissioners for their time. Stated that he was discouraged by the Town of Frisco's process of building within a wetland. The protraction of watershed destruction has to be stopped. Mr. Guglielmo felt the discussion with the town is an act of futility as he felt the Planning Commission had already made their decision. Stated that the variance violates some Town Codes and Ordinances. Concern that there is no regard for the adjacent homeowners involved.
- Debbie Shoop, 1110 Bright Hope Rd., Breckenridge. Ms. Shoop stated that she is the listing broker for the seller and gave a brief history of the property including that Mr. R. J. Currier, the developer of the Windstream Townhomes, original intent was to build a higher density parcel on this property.
- Edward Balduf, 317F Galena St., Frisco. Mr. Balduf stated that the Planning Commission is not addressing all of the issues. The property is identified as "developable", but taxed as undevelopable land. Mr. Balduf raised a concern about threats and intimidation tactics he felt were being used and noted that Windstream Homeowners do not use the land but take pictures from afar.
- Chris Eby, 403 Creekside Dr., Frisco. Mr. Eby stated that he owns the home that is directly across the creek from the property in question and stated the wildlife cross over from his property to their destination, the pristine wetlands in question. Mr. Eby noted in 1998 there was a small amount of water in his crawlspace and in 2007 the water in the crawlspace was full-time. Mr. Eby requests that the Planning Commission reject the variance based on the wetlands.
- Paul Hamel, 405 Creekside Dr., Frisco. Mr. Hamel asked if the petitioners own the property. Mr. Renaud responded that they are acting as the owner's agents. Mr. Hamel stated that wetlands are protected for a reason and urged the Commission to deny this petition based on the wetlands and natural beauty. Mr. Hamel noted a lot has been made of the fact that this has been a residential plot since the 1880's but Frisco, in the 1880's, did not care about preserving wetlands. He raised concern that something historically within that context may not be justifiable today and whether a previous owner had intention to put multi-family on a lot does not bear relevance.
- Karen Berg, 212 3<sup>rd</sup> St., Frisco. Ms. Burk stated that she does not have a water problem but lives in fear of a water problem because there is no one closer to the water than her property and is worried with more density causing a larger problem. Ms. Burk asks that the Planning Commissioners look at the bigger picture and the petitioners that will come in after this.
- Derek Goossen, 317A Galena St., Frisco. Mr. Goossen expressed worry if this is backfilled or disturbed that it will cause flooding problems and noted that this property is one of the last green spaces in the middle of

town for wildlife to access. Mr. Goossen gave a history of the area noting when a gas line was put in on Galena Street, surveyors said that there was a river running under the street and the elevation of this lot is in that water table. Mr. Goossen closed by stating that he is worried about the negative flooding threats to surrounding properties.

There being no further comments, Commissioner Stabile called for a 5-minute break at 6:31 p.m. prior to Commissioner Discussion.

Commissioner Stabile reconvened at 6:36 p.m. and asked the Applicant if he would like to address any issues.

The Applicant, Jacob Miller, 503 Polar Ct., Silverthorne, addressed the fact that they love the wildlife also and appreciate open space and they are not trying to take that away. Mr. Miller noted that is understandable that those who already have a house here on the river do not want others to build.

#### **Commissioner Discussions:**

- Commissioner Lederer shares the concerns expressed and would like the Planning Commissioners to help minimize the disturbances if possible. Would like to hear any options to reduce the disturbance of the wetlands.
- Commissioners discussed how they could lessen the impact to the 25' wetland setback. Is it possible to build this with a pier foundation as opposed to a bathtub type foundation, which would mitigate the bathtub effect? Mr. Renaud acknowledged that the Commission could impose a condition as such.
- Commissioners appreciated that the applicant would consider a pier foundation.
- Commissioner Stabile suggested that the 30' building envelope be reduced to a 25' building envelope and reiterated that the Code requires that the owner is able to build on this lot.
- Commissioners agreed that they would like to add a condition and requested that Staff draft such. Mr. Gibson asked for a specific number for a potential setback.
- Commissioners suggested 12 ½' wetlands setback and to keep continuity, 15' setback on the east side, 10' setback on west side and record the plat as stated in the suggested condition.
- Commissioner Franken stated that he was unsure what he would do at the meeting's onset and having now paid attention to conversation from the attorney, the commissioners, and the public in attendance, he will make what he think is the correct decision for the Town. Mr. Franken stated that he felt slightly offended that a statement was made that the decision had already been made and does not believe any of his fellow Planning Commissioners had made up their minds before they walked into this room. Mr. Franken noted that the Federal Government controls the wetlands and leaves very little choice since this lot is zoned residential. Mr. Franken noted the Town of Frisco could have bought this lot, but they did not, and as a Planning Commissioner, he has to look at Code and does the owner of a lot have the right to build on the lot. Mr. Franken noted appreciation for the homeowner's willingness to allow the Commission to minimize the building envelope and based on his oath to the town, he has to vote in favor of this variance.
- The Commissioners agreed that they are held to a standard to follow the Code. Commissioners were in agreement with Mr. Franken's comments. Commissioners appreciate the public attending and speaking passionately about Frisco and clarified that only one variance is being discussed here and everything else will be held to the letter of the law.

Mr. Renaud questioned whether there was any better way to refer to a pier foundation system. Commissioner Stabile responded with a helical pier foundation system or similar system. Mr. Renaud continued with the suggested conditions that would be added to the special conditions set forth in the staff report in addition to the existing proposed condition. The 2<sup>nd</sup> condition would read that any structure built on the subject property would be built only using a helical pier foundation system and then the 3<sup>rd</sup> condition would be that the setback of any

structure from the east lot line shall be not less than 15' and the setback of any lot line from the west lot line shall be not less than 10'.

WITH RESPECT TO PLANNING FILE NO. 260-19-VAR, COMMISSIONER FRANKEN MOVED THAT THE RECOMMENDED FINDINGS AS AMENDED SET FORTH IN THE FEBRUARY 6, 2020 STAFF REPORT BE MADE AND THAT THE RECOMMENDED THREE CONDITIONS AS AMENDED SET FORTH THEREIN BE TAKEN AND THE PLANNING COMMISSION HEREBY APPROVES THE VARIANCE APPLICATION REQUESTING RELIEF FROM SECTION 180-6.7, WATER QUALITY PROECTION, FRISCO UNIFIED DEVELOPMENT CODE, TO ALLOW FOR A REDUCTION OF THE 25-FOOT WATERSIDE SETBACK, LOCATED AT LOTS 23-24, BLOCK D, FRISCO TOWNSITE.

**SPECIAL CONDITIONS:**

- 1) PRIOR TO SUBMITTAL OF THE BUILDING PERMIT APPLICATION, THE APPLICANTS SHALL HAVE CAUSED A FINAL PLAT TO HAVE BEEN APPROVED BY THE TOWN OF FRISCO AND FULLY EXECUTED TO ESTABLISH A BUILDING ENVELOPE FOR THE DEVELOPMENT ON LOTS 23-24, BLOCK D, FRISCO TOWNSITE. SAID BUILDING ENVELOPE SHALL PROHIBIT DEVELOPMENT WITHIN TEN MILE CREEK, THE MAPPED FLOODWAY SPECIAL FLOOD HAZARD AREA, AND THE 25-FOOT WATERSIDE SETBACK FROM TEN MILE CREEK.
- 2) ANY STRUCTURE BUILT ON THE SUBJECT PROPERTY SHALL ONLY BE BUILT USING A HELICAL PIER OR SIMILAR FOUNDATION.
- 3) THE SETBACK OF ANY STRUCTURE FROM THE EAST LOT LINE SHALL NOT BE LESS THAN 15' AND THE SETBACK OF ANY STRUCTURE FROM THE WEST LOT LINE SHALL NOT BE LESS THAN 10'.

MOTION SECONDED BY COMMISSIONER SKUPIEN.

**Vote:**

FRANKEN	YEA
HELD	ABSENT
LEDERER	YEA
LESMES	ABSENT
SKUPIEN	YEA
STABILE	YEA
WITHROW	YEA

***MOTION CARRIED***

Mr. Renaud requested permission to give an advisement to the applicant with respect to the termination of this variance approval and that a special condition requiring them re-plat this property with the building envelope does not count as moving forward on the project. Mr. Renaud wanted to ensure the applicant is aware that there is Code Section 180-2.7.3C4, which sets up a two-year period for the variance. It will expire unless in two years they have taken action. Mr. Renaud was clear that re-platting is not the action. The action has to be the pulling of a building permit or other license.

**Staff and Commissioner Updates:**

- Early Registration for Youth Summer Camps starts Monday, April 6<sup>th</sup> and Tuesday, April 7<sup>th</sup>, 8 a.m. – 1 p.m. in-person only prior to registration opening to the public on April 8<sup>th</sup>
- Summit County has notified the Town that a draft of the Hazard Mitigation Plan is online. Please review and provide feedback via the survey
- Update on Baymont: construction has been delayed until after ski season
- Update on Library Lofts: foundation permit has been pulled
- Update on Marina: Recreation and Culture Dept. went to Town Council this past month, nothing final yet but they are working through the design elements
- Update on Lake Hill: the County just distributed the draft version of the build-out analysis that is being prepared for the Sanitation District to see what the impact on current infrastructure would be
- Update on Foote's Rest: the permit approval is good for three years, Bill and Rick Weinman met with Kelly Foote 2-3 weeks ago and they are working with their architects to change the structural design of the building
- Update on Fox Meadow: the application has expired
- Update on Excelsior Building: Town Council has not made a decision
- Update on GAP Project: construction will occur 2020-2021, they are going to start on the PRA/Hospital end of the project and work their way towards Main St. The Main St. part of the project will be in 2021.

**Adjournment:**

There being no further business, Commissioner Franken made a motion to adjourn, seconded by Commissioner Lederer and was unanimous. The meeting adjourned at 7:15 p.m.

Respectfully submitted,

Cheryl Mattka  
Community Development Department