



## **PLANNING COMMISSION STAFF REPORT**

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February 6, 2020

**AGENDA ITEM:** 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.

**LOCATION:** Lots 23-24, Block D, Frisco Townsite

**ZONING:** Residential High Density (HR) District

**APPLICANT** Jacob and Rori Miller  
PO Box 1582  
Silverthorne, CO 80498

**OWNER:** Lakewood Properties LTD  
PO Box 16430  
Golden, CO 80402

**NOTICING:** Published in the Summit County Journal: 1/31/2020  
Mailed to adjacent property owners: 1/23/2020  
Posted at the Post Office: 1/23/2020  
Posted at the Site: 1/23/2020

**TOWN STAFF:** Bill Gibson, Assistant Community Development Director (970) 668-9121  
[billg@townoffrisco.com](mailto:billg@townoffrisco.com)

### **PROJECT DESCRIPTION**

The subject property, Lots 23-24, Block D, Frisco Townsite, has extraordinary and exceptional physical features including existing wetlands, Ten Mile Creek, and a mapped Floodway Special Flood Hazard Areas associated with Ten Mile Creek.

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.

Wetlands are present on the subject property and on the neighboring properties to the west (privately owned Lots 16-22, Block D, Frisco Townsite) and east (Town of Frisco North 4<sup>th</sup> Avenue right-of-way). The Applicants have obtained U.S. Army Corps of Engineers

authorization by “Nationwide Permit Number (NWP) 29 – Residential Development” to remove wetlands on the subject property. However, future development of this property is still affected by the 25-foot waterside setback from wetlands located on the neighboring properties to the west and east. The subject property is 50 feet in width from west to east and applying a 25-foot setback from the neighboring wetlands located to both sides of this lot would render the subject property unbuildable (i.e. a 50-foot wide waterside setback over a 50-foot wide lot).

The Applicants are requesting this variance to facilitate the future construction a new single-family residence on Lots 23-24, Block D, Frisco Townsite. The Applicants have noted their intent to comply with all other requirements of the Frisco Unified Development Code, including adhering to the provision of the waterside setback standards that prohibits soil disturbance within 25 feet of a body of water (i.e. Ten Mile Creek).

Should the Planning Commission choose to approve this variance application, Staff recommends a condition of approval that the Applicants resubdivide the subject property to establish a platted building envelope that prohibits future development within Ten Mile Creek, the mapped floodway, and the waterside setback measured from Ten Mile Creek.

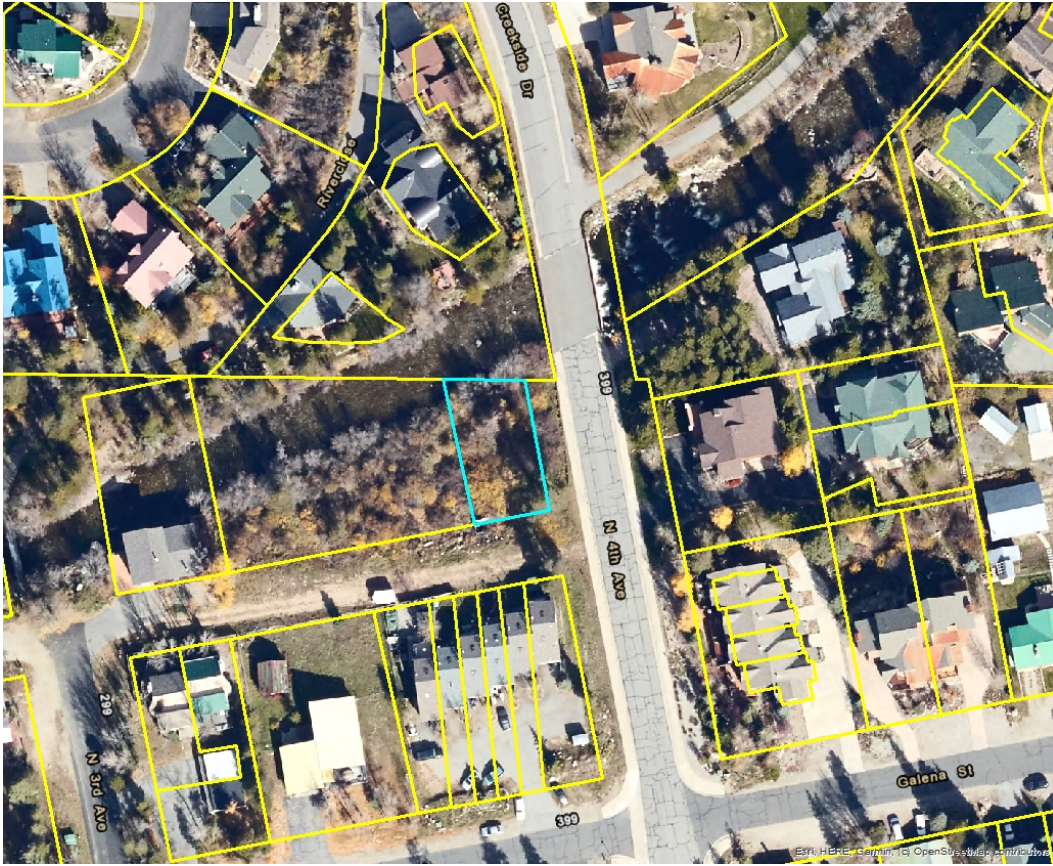
New single-family residences are reviewed administratively through a Minor Site Plan Application and an associated Building Permit Application. The Applicants have not yet submitted a site plan or building permit application for a future new single-family residence since Sub-section 180-2.7.3.C.2.c of the Frisco Unified Development Code states:

*No other applications may be submitted concurrently with a variance application. An applicant must have received approval of a non-use variance prior to submitting any development application or any other related application.*

For a more complete description of this project, please refer to the attached application materials.

## **BACKGROUND**

The subject property is located west of North 4<sup>th</sup> Avenue, south of Ten Mile Creek, and north of an unimproved alley right-of-way. Below is a vicinity map of the subject property (outlined in blue) with an aerial photography base layer.



Vicinity Map

Other than remnants of a dilapidated shed partially located on the southwest corner of this lot, the subject property is undeveloped. As an undeveloped property, there is currently no assigned street address. The Town of Frisco will collaborate with the Summit County Information Systems Department to assign an official street address for this property when it is developed in the future.

The subject property, Lots 23-24, Block D, Frisco Townsite, was part of the original Town of Frisco incorporated in the 1880. The subject property has been a platted lot within the Town of Frisco for 140 years.

The subject property has been designated for residential development for no less than six (6) decades. The 1958 Frisco Master Plan identifies this property as being located within the "Residential (R) District."



The Town of Frisco's 1966 Zoning Map designates this property as "R-1 Residential" and the 1974 Zoning Map designates the property as "R-4" residential district. The Town of Frisco's modern zoning regulations were originally adopted on November 3, 1982 through Ordinance 82-19. Frisco's archived 1985 Zoning Map shows the subject property zoned as "R-H Residential Highest Allowable Density".

Ordinance 82-19 included water quality protection regulations, including a 25-foot "streamside setback". In 1995, the Town of Frisco adopted Ordinance 95-01, which expanded application of this setback to apply to wetlands.

In 2017, the Town of Frisco consolidated its zoning regulations and subdivision regulations into a single chapter of the Town Code titled the "Frisco Unified Development Code (UDC)". The UDC renamed the RH District from "Residential Highest Allowable Density" to "Residential High Density" which is the current zoning designation for the subject property.

On November 6, 2019, the Applicants obtained U.S. Army Corps of Engineers authorization by "Nationwide Permit Number (NWP) 29 – Residential Development" to remove wetlands on the subject property. This authorization does not allow the Applicants to alter existing wetlands on any neighboring properties.



Photographs of the subject property are included below for reference.



View from North 4<sup>th</sup> Avenue looking northwest (1/30/2020)



View from North 4<sup>th</sup> Avenue looking southwest (1/30/2020)

## REQUIRED ACTION

Planning Commission: Approval, approval with conditions, or denial of a Variance Application.

## ANALYSIS - WATER QUALITY PROTECTION [§180-2.7.3]

The Applicants are requesting a variance from the 25-foot waterside setback from wetlands. Please refer as the highlighted portion of Sub-section 180-6.7.2 below:

### 180-6.7. WATER QUALITY PROTECTION

#### 180-6.7.1. OBJECTIVE

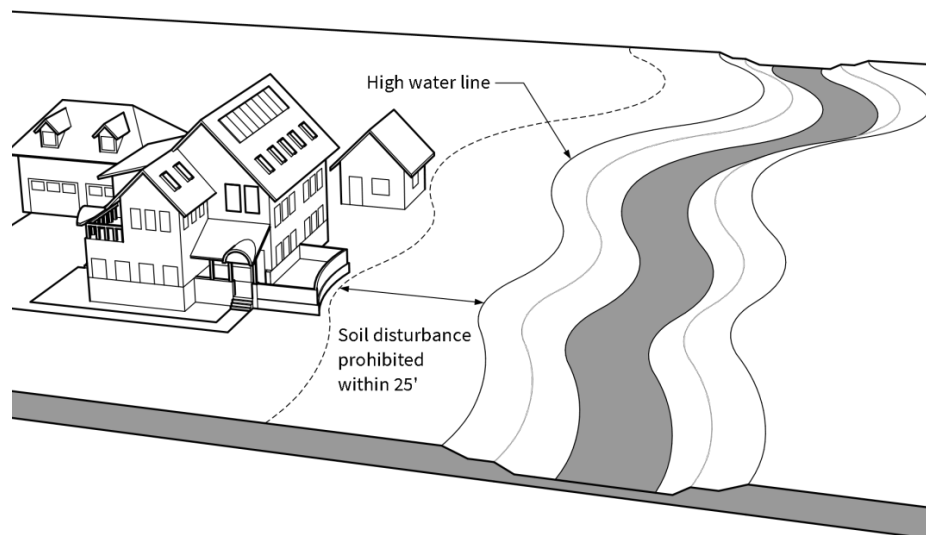
*To protect water quality by maintaining a natural buffer through which pollutants pass and to protect the riparian habitat and the visual appearance of the Town's waterways, lakeshores, and wetlands by prohibiting soil disturbance within 25 feet of a body of water or wetland.*

#### 180-6.7.2. WATERSIDE SETBACK

*The following criteria must be met by all development.*

- A. **Soil disturbance is prohibited within 25 feet of** all lakes, perennial streams, intermittent streams, **wetlands**, and from all swales draining 20 acres or more measured horizontally from the high water line as determined by Community Development Department staff. Soil disturbance includes, but is not limited to, building construction, and the construction of decks, hot tubs, paving, pathways, landscaping, and fences, and is further defined in Chapter 180, Article 9.

Figure 6-C: Waterside Setback



- B. No snow storage is permitted within the 25-foot waterside setback.  
C. No development within the waterside setback shall be allowed without approval of a variance by the Town.

- D. *For wetlands, evidence of compliance with Section 404 of the Federal Clean Water Act or evidence that the wetland area is not subject to the jurisdiction of the United States Army Corps of Engineers under Section 404, shall be presented.*

#### **180-6.7.3. WATERWAY DEGRADATION**

*Prior to plan approval, the applicant shall submit a plan to the Community Development Department to ensure that the proposed development does not result in reasonably avoidable degradation of any stream, lake, or wetland system. This condition shall apply to both the development activity and the ultimate use of the land. Items such as use restrictions, settling basins, filtration galleries, perimeter control, sandtraps, as well as the ultimate maintenance of these items shall be addressed in the plan and resolved prior to approval.*

#### **180-6.7.4. EXEMPTIONS**

- A. *The placement of permanent landscaping, erosion control devices, and permeable surface cover which disturb 350 square feet or less of lot area, may be approved by Town staff only upon a favorable recommendation by the Town Engineer and/or other applicable review agencies. Any such placement may be taken to the Planning Commission at the discretion of Town staff.*
- B. *With the approval of the Town Engineer and presentation to the Planning Commission, projects which are intended for the benefit of the community and installed by or under supervision of the Town are exempt. These projects may include but are not limited to, stream bank stabilization and erosion control activities; road and utility crossing; bike and pedestrian paths; flood control and other safety related projects; public recreational improvements including whitewater boating and marina facilities such as docks, piers and launch sites, and dredging operations; and aquatic and terrestrial wildlife habitat improvements. The water body, intermittent stream, or wetland must be hydrologically isolated from all soil disturbances according to one or more of the following procedures:*
1. *A cast concrete, metal coffer dam, or other technique is installed to isolate the water body from construction activity prior to any construction and maintained in place until revegetation and bank stabilization has been completed and approved by the Town Engineer and Community Development Department.*
  2. *The stream is completely contained in a culvert during construction from 50 feet upstream of any soil disturbance to 50 feet downstream of any soil disturbance. For streams and intermittent streams, the culvert shall be designed to convey, at a minimum, a flow with a ten percent chance of occurrence. The culvert shall be removed after revegetation is approved by the Town Engineer and Community Development Department.*
  3. *Another technique approved by the Town Engineer.*
- C. *Closed-loop stream or pond systems shall be exempt from the requirements of this Section 180-6.7, Water Quality Protection, if approved by the Town Engineer. A closed-looped system shall be defined as any man-made stream, pond, or other body of water that operates by recirculating its water supply with no discharge into any defined natural body of water (including but not limited to any lake, stream, intermittent stream, or wetland). Although a closed-loop system does not require waterside setbacks, the closed-loop system itself may not be constructed within 25 feet of any lake, stream, intermittent stream, or wetland.*

## VARIANCES [§180-2.7.3]

### A. Purpose

The Planning Commission finds and determines that there may be exceptional or extraordinary circumstances or conditions that are applicable to properties within the Town that do not generally apply to property within the Town, such that denial of an application for relief would result in an inability to reasonably utilize property. Therefore, it is necessary to provide for such extraordinary relief in the form of variances.

### B. Applicability

Any property owner seeking relief from this Chapter may request a variance when the strict application of a provision of this Chapter would result in an undue hardship. The variance procedure may not be used to allow a use in a zoning district where it is not currently permitted, and is not intended to alleviate inconveniences or financial burdens imposed on landowners. The burden shall be upon the applicant to meet the criteria set forth in this section.

### C.2. Application Submittal

a. An applicant for a variance must prove that due diligence was exercised by the applicant before the condition giving rise to the request for a variance occurred. Due diligence shall require a persistent and reasonable inquiry to investigate relevant and applicable facts through both personal and professional actions required of any reasonably prudent person acting as a fiduciary exercising professional judgment and common sense. If an applicant fails to exercise due diligence in discovering, preventing, or attempting to remedy a non-conforming condition the request for a variance shall be denied.

b. An application for a variance must be submitted and approved by the Planning Commission prior to the submittal of a development application.

c. No other applications may be submitted concurrently with a variance application. An applicant must have received approval of a non-use variance prior to submitting any development application or any other related application.

### C.4. Expiration and Termination of Right

A variance, together with the accompanying site or development plan granted pursuant to this section, shall expire two years after the date of final approval if action has not been taken within that period. This time may be extended with the approval of the Planning Commission or Town Council, if the petitioner can show due cause. For purposes of this subsection, "action" means obtaining a building permit or other applicable Town permit/license pursuant to the granting of the variance, or, if a permit or license is not required, the right that is granted pursuant to the variance is put to use.

### D. Criteria for Granting a Variance

The Planning Commission shall not approve the variance unless it finds that all of the following criteria are met:

1. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district;



**Staff's Analysis:** The subject property has been a platted lot within the Town of Frisco for the past 140 years and has been designated for residential development for no less than six decades. This lot is currently zoned Residential High Density District.

The subject property has extraordinary and exceptional physical conditions including wetlands, Ten Mile Creek, and a mapped Floodway Special Flood Hazard Areas associated with Ten Mile Creek.

In addition to these unique characteristics, the subject property is also legally non-conforming in regards to the minimum lot size standard of 10,500 square feet prescribed for properties located within the Residential High Density Zoning District. This existing lot is fifty feet (50) in width from west to east with a total area of 4,975 square feet.

The application meets this criterion.

2. That the extraordinary or exceptional physical condition of the property will not allow reasonable use of the property in its current zone in the absence of relief;

**Staff's Analysis:** This property is zoned Residential High Density (RH) District. The general zoning setbacks for a property in this district are 20 feet in the front yard, 10 feet in the side yards, and 10 feet in the rear yard. The Applicants have indicated that the future development of this lot will comply with these standards.

Ten Mile Creek is located on the northern portion of this lot. Therefore, this property is also subject to the waterside setback that prohibits soil disturbance within 25 feet of a body of water. The Applicants have indicated that the future development of this lot will comply with the waterside setback from Ten Mile Creek.

There is a mapped Floodway Special Flood Hazard Area associated with Ten Mile Creek on this property. While the Frisco Unified Development Code allows construction within a floodway under certain conditions, the Applicants have indicated that the future development of this lot will not be located within the floodway.

As identified above, the subject property is also legally non-conforming in regards to the minimum lot size standard of 10,500 square feet as prescribed in the Residential High Density Zoning District. This existing lot is fifty feet (50) in width from west to east with a total area of 4,975 square feet. The Applicants are requesting relief from the waterside setback from wetlands because applying a 25-foot setback from the existing wetlands located on the neighboring properties on the west and east would render the subject property unbuildable (i.e. a 50-foot wide setback over a 50-foot wide lot).

The application meets this criterion.

3. That the granting of the variance will not have an adverse impact on the surrounding properties, the neighborhood, or the community as a whole;

**Staff's Analysis:** If this Variance Application is approved and relief is granted from the waterside setback from wetlands for the subject property, future development of this property will still be subject to all other standards and requirements of Frisco's development regulations (zoning, subdivision, building and fire codes, street design standards, etc.). In addition, disturbance of

existing wetlands on this property must be conducted in accordance with U.S. Army Corp of Engineers authorization.

The Applicants have indicated that the future development of this site will not be located within the mapped floodway and will comply with the waterside setback standard prohibiting soil disturbance within 25 feet of Ten Mile Creek.

The subject property has been a platted lot within the Town of Frisco since 1880 and has been designated for residential development since at least 1958. This lot is currently zoned Residential High Density which allows for residential development of the subject property.

On December 18, 2019, the Applicants attended a Development Review Committee (DRC) meeting with Town Staff and the relevant referral agencies to discuss this proposed variance and the Applicants' preliminary plans for constructing a new residence on the subject property. The referral agencies did not express concerns about this proposed variance.

The application meets this criterion.

4. The granting of a variance will not be detrimental to public health, safety and welfare or injurious to surrounding property values and neighborhood character;
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**Staff's Analysis:** As noted above, if this Variance Application is approved and relief is granted from the waterside setback from wetlands for the subject property, future development of this property will still be subject to all other standards and requirements of the Frisco's development regulations (zoning, subdivision, building and fire codes, street design standards, etc.). Also, disturbance of existing wetlands on this property must be conducted in accordance with U.S. Army Corp of Engineers authorization.

The Applicants have indicated that the future development of this site will not be located within the mapped floodway and will comply with the waterside setback standard prohibiting soil disturbance within 25 feet of Ten Mile Creek.

The subject property has been a platted lot within the Town of Frisco since 1880 and has been designated for residential development for no less than six decades. This lot is currently zoned Residential High Density which allows for residential development of the subject property.

This proposed variance would accommodate future development of the subject property with a single-family residence that would be compatible and complimentary to existing development on this block between the creek and the alley. The existing two-story single-family residence located at 212 North 3<sup>rd</sup> Avenue is similarly oriented to the alley and the creek as the future residence desired by the Applicants. This existing property provides an example of the neighborhood character and reasonable use of the subject property. The footprint of the 212 North 3<sup>rd</sup> Avenue residence is approximately the same size as the future building footprint proposed by the Applicants (i.e. 30 feet by 45 feet). There are no records about the original construction of this neighboring residence in the Town's archives. The Summit County Assessor indicates that this structure was built in 1975, which pre-dates the Town's current zoning regulations.

While Planning Commission approval of a variance does not set a precedent for future variances, the existing homes located directly across North 4<sup>th</sup> Avenue from the subject property also provide examples of the existing neighborhood character and reasonable use of the subject property. In 2001, the Planning Commission approved a 20-foot variance from the 25-foot waterside setback from wetlands to accommodate the construction of the existing home at 196 North 4<sup>th</sup> Avenue. In

addition, the adjacent home at 200 North 4<sup>th</sup> Avenue is legally non-conforming in regards to driveway encroachments into the 25-foot waterside setback from Ten Mile Creek.

The application meets this criterion.

5. The granting of the variance shall not be substantially inconsistent with any plans adopted by the Town;

### **Staff's Analysis:**

Policies 1.1A, 2.1B, and 6.2A of the Frisco Community Plan appear relevant to this proposed variance request. Please refer to the following excerpts highlighted in bold:

#### *Guiding Principle 1: Inclusive Community*

*Frisco cares about our neighbors, visitors, and the whole of our community. We are an inclusive community that welcomes people of all backgrounds and income levels. We support a balance of housing options to create opportunities for a diverse population to reside here. Our history is integral to our identity and it is also a guiding principle for our future. As the Town grows and changes, we need to be rooted in the values of our past. The Ten Mile Range mountain backdrop, historic structures, vibrant neighborhoods, and a lively Main Street characterize Frisco along with the friendly people and welcoming vibe. As Frisco grows, this character and identity should be preserved and enhanced throughout Town.*

##### *1.1: Protect the character and livability of Frisco's residential neighborhoods*

- **1.1A Ensure new housing compliments adjacent properties and neighborhoods through appropriate mass, scale, and design. See page 68 for Area Specific Policies/Design Principles to help encourage compatible neighborhood development.**

#### *Guiding Principle 2: Thriving Economy*

*The Frisco economy is built upon a unique balance of tourism and its role as a commercial-service hub for the region. Tourism, driven by recreational opportunities, and the small, mountain town appeal of Main Street, creates jobs and revenue. Locals and visitors utilize the large retailers, grocery stores, and services located along Summit Boulevard, and support the small businesses on Main Street. While the Frisco economy has seen steady growth in the past decade, diversification of the economy is important. More year-round opportunities will provide stability through the seasons and economic downturns. The Town should focus on small, incremental changes that preserve the town character and a healthy small business community that attracts residents and visitors.*

##### *2.1: Maintain a diverse and strong economy*

- **2.1B Provide opportunities for a balanced mix of housing and services to support local businesses, employees, residents and visitors.**

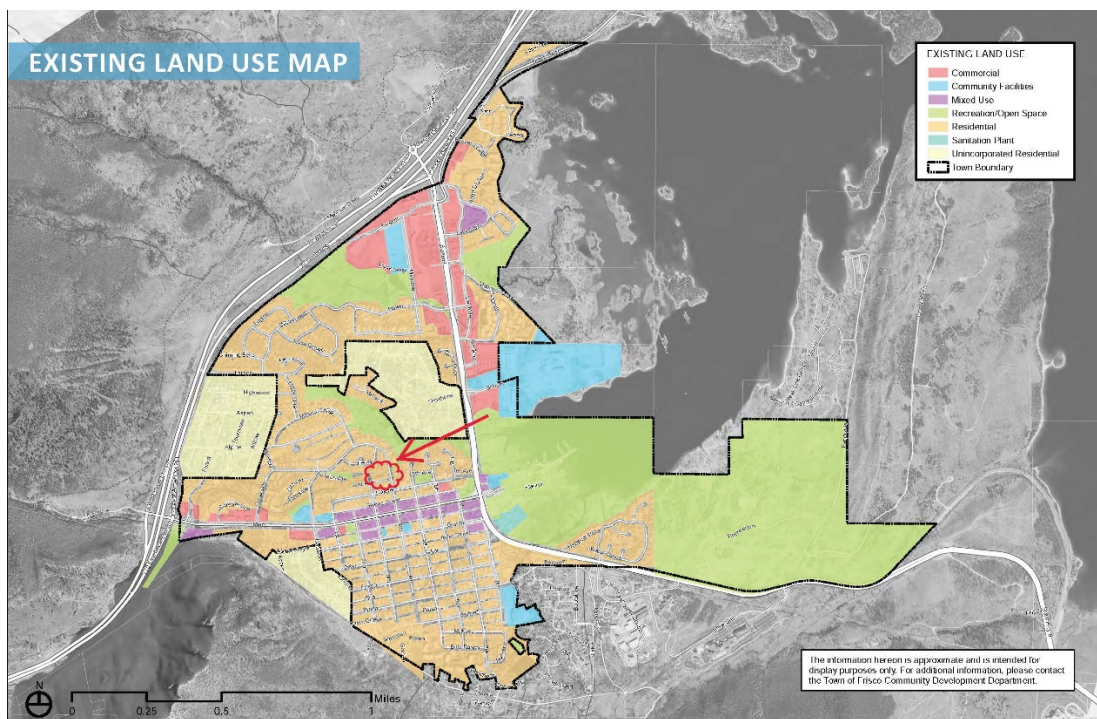
#### *Guiding Principle 6: Sustainable Environment*

*Frisco's natural environment is the primary quality that attracts residents and visitors. It supports our economy and drives our recreational pursuits. Protecting the surrounding mountains, forests, waterways, and views are all deeply important to the community. These natural assets make Frisco beautiful, unique, and drive a thriving year-round economy. Pollution, wildfires, avalanches, and floods are threats to Town resources that should be recognized and minimized to the extent possible. The community should embrace measures for sustainability that reduce greenhouse gas emissions and conserve its water resources.*

6.2: Protect the quality and health of the natural environment in Frisco and the surrounding area

- **6.2A Protect and enhance surface and ground water quality in Lake Dillon, Ten Mile Creek, and other locations.**

In addition, Appendix C: Reference Maps, of the Frisco Community Plan includes an Existing Land Use Map. This map identifies the subject property as an existing residential land use.



A variance from the waterside setback is generally not supported by the Community Plan Guiding Principle of Sustainable Environment. However, such a variance application that facilitates future residential development of an existing lot that is zoned for residential use is supported by the Guiding Principles of Including Community and Thriving Economy.

The application meets this criterion.

6. The granting of the variance shall not materially weaken the general purpose of this Chapter or its regulations; and

**Staff's Analysis:** The purpose of the Frisco Unified Development Code is as follows:



*180-1.3.1. This Chapter is enacted to protect the public health, safety, and general welfare and to implement the policies of the Master Plan.*

*180-1.3.2. This Chapter is specifically intended to:*

- A. Create efficient streets and allow mobility by vehicle, bike and foot;*
- B. Create a healthy community;*
- C. Secure safety from fire, flood, and other dangers;*
- D. Provide adequate light and air;*
- E. Prevent overcrowding of land;*
- F. Avoid undue concentration of population;*
- G. Encourage housing for persons of all income levels;*
- H. Facilitate the adequate provision of transportation, drainage, schools, parks, open space and other requirements;*
- I. Conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment;*
- J. Encourage the most appropriate use of land throughout the Town based upon the Master Plan and other long-range planning documents; and*
- K. Preserve and increase amenities that are vital to the economic health of the community by the promulgation of regulations to fulfill said purposes, in accordance with the provisions of Part 3, Article 23, Title 31, Colorado Revised Statutes (1977 Replacement Volume).*

Given the extraordinary and exceptional physical conditions of the subject property and the unique circumstances affecting the future development of this platted and zoned lot, the proposed variance will not weaken the stated purpose or the regulations of the Frisco Unified Development Code.

The application meets this criterion.

7. The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property.

**Staff's Analysis:** As noted above, the subject property is zoned Residential High Density (RH) District. The general zoning setbacks for a property in this district are 20 feet in the front yard, 10 feet in the side yards, and 10 feet in the rear yard. The Applicants have indicated that the future development of this lot will comply with these standards.

Ten Mile Creek is located on the northern portion of this lot. Therefore, the subject property is also subject to the waterside setback which prohibits soil disturbance within 25 feet of a body of water. The Applicants have indicated that the future development of this lot will comply with the waterside setback from Ten Mile Creek.

There is a Floodway Special Flood Hazard Area associated with Ten Mile Creek mapped on this property. While the Frisco Unified Development Code allows construction within a floodway under certain conditions, the Applicants have indicated that the future development of this lot will not be located within the floodway.

As identified above, the subject property is also legally non-conforming in regards to the minimum lot size standard of 10,500 square feet prescribed in the Residential High Density Zoning District. This existing lot is fifty feet (50) in width from west to east with a total area of 4,975 square feet.

The Applicants are requesting relief from the waterside setback from wetlands because applying a 25-foot setback from the existing wetlands located on the neighboring properties to both the west and east would render the subject property unbuildable (i.e. a 50-foot wide setback over a 50-foot wide lot). The submitted Variance Application is limited in scope to requesting relief from the waterside setback from wetlands as this standard would render this lot unbuildable.

This proposed variance would accommodate future development of the subject property with a single-family residence that would be compatible and complimentary to existing development on this block between the creek and the alley. The existing two-story single-family residence located at 212 North 3<sup>rd</sup> Avenue is similarly oriented to the alley and the creek as the future residence desired by the Applicants. This existing property provides an example of the neighborhood character and reasonable use of the subject property. The footprint of the 212 North 3<sup>rd</sup> Avenue residence is approximately the same size as the future building footprint proposed by the Applicants (i.e. 30 feet by 45 feet). There are no records about the original construction of this neighboring residence in the Town's archives. The Summit County Assessor indicates that this structure was built in 1975, which pre-dates the Town's current zoning regulations.

While Planning Commission approval of a variance does not set a precedent for future variances, the existing homes located directly across North 4<sup>th</sup> Avenue from the subject property also provide examples of the existing neighborhood character and reasonable use of the subject property. In 2001, the Planning Commission approved a 20-foot variance from the 25-foot waterside setback from wetlands to accommodate the construction of the existing home at 196 North 4<sup>th</sup> Avenue. In addition, the adjacent home at 200 North 4<sup>th</sup> Avenue is legally non-conforming in regards to driveway encroachments into the 25-foot waterside setback from Ten Mile Creek.

The application meets this criterion.

#### **PUBLIC COMMENT**

As of January 31, 2020, the Community Development Department has received a public comment letter concerning this application from Larry and Diane Jensen. This public comment letter has been attached to this staff report.

#### **STAFF RECOMMENDATIONS**

##### **Recommended Findings**

The Community Development Department recommends the following findings pertaining to the variance application:

*Based upon the review of the Staff Report dated February 6, 2020 and the evidence and testimony presented, the Planning Commission finds:*

*The proposed variance is in general conformance with the Town of Frisco Code, specifically Section 180-2.7.3, Variances, because the following criteria established for allowing a variance have been met:*

- 1. The property has extraordinary physical conditions that do not generally exist in nearby properties in the same zoning district including, but not limited to, wetlands, Ten Mile Creek, a mapped Floodway hazard area, and a nonconforming lot size;*

2. *The extraordinary physical condition of the property will not allow reasonable use of the property in its current zone in the absence of relief as strict implementation of the 25-foot waterside setback from the existing wetlands on the neighboring properties would result in a 50-foot wide setback over a 50-foot wide lot thus rendering the subject property unbuildable;*
3. *The granting of the variance will not have an adverse impact on the surrounding properties, the neighborhood, or the community as a whole as future development will continue to be subject to all other development requirements and standards (zoning, subdivision, building and fire code, regulations, street design criteria, etc.). In addition, adoption of the proposed condition of approval to establish a platted building envelope restricting the location of future development on this site will further reduce any possible adverse impacts to the surrounding properties, the neighborhood, and the community;*
4. *The granting of the variance will not be detrimental to public health, safety and welfare or injurious to surrounding property values and neighborhood character as future development will continue to be subject to all other development requirements and standards (zoning, subdivision, building and fire code, regulations, street design criteria, etc.). In addition, the future construction of a single-family residence on the subject property would be consistent and complimentary to the built character of the immediate neighborhood, specifically the similarly situated 212 North 3<sup>rd</sup> Avenue.*
5. *The granting of the variance is not substantially inconsistent with any plans adopted by the Town as residential development of this platted and residential zoned lot is supported by the Frisco Community Plan Guiding Principles of Inclusive Community and Thriving Economy. Furthermore, the Frisco Community Plan identifies the subject property as an existing residential land use;*
6. *The granting of the variance shall not materially weaken the general purpose of this Chapter or its regulations given the extraordinary and exceptional physical conditions of the subject property and the unique circumstances encumbering the future development of this site; and,*
7. *The variance is granted only to the extent necessary to afford a reasonable use of the property since the proposed variance application is limited in scope a request for relief from the waterside setback from wetlands that would otherwise render the subject property unbuildable. In addition, the variance accommodates reasonable use of the subject property in a manner similar to the existing homes located directly to the west and to the east of this site.*

### **Recommended Action**

Based upon the findings above, the Community Development Department recommends APPROVAL of the Variance Application with the following condition:

#### *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.*

### **Recommended Motion**

Should the Planning Commission choose to approve this variance application, the Community Development Department recommends the following motion:

***With respect to Planning File No. 260-19-VAR, I move that the recommended findings set forth in the February 6, 2020, staff report be made and that the recommended conditions set forth therein be taken and that the Planning Commission hereby APPROVES the 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.***

<b>ATTACHMENTS</b>
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#### Attachments:

- Application Materials
- Public Comment



December 9, 2019

To The Planning Commission;

We are long-time Summit County locals hoping to build a single-family residence for our family on the lot described as TBD 4<sup>th</sup> Avenue in Frisco. We are aware that there are wetlands issues and have received permission from the Army Corps of Engineers by a Nationwide Permit Number 29 to disturb the wetlands on the property by adding fill dirt. We have been working with Blue River Land Surveying and 285 Engineering to place the residence in the spot that disturbs the wetlands the least.

We are requesting a 10-foot variance from Frisco's 25-foot setback standard from adjacent wetlands. We are not asking to encroach upon the 25-foot setback from the creek, but rather, asking for smaller setbacks from the wetlands adjoining three sides, West, North and East. Without this variance, it would not be possible to have a house on this property.

Under the current setback requirements, we are not allowed reasonable use of the property, in it's current zone, in the absence of relief. The 25-foot setbacks from wetlands requirement imposed by the Town of Frisco deems our property unbuildable due to the fact that it is only 50 feet wide and adjacent to a property which, in it's current state, is mostly wetlands.

This variance will not have any adverse impacts on the surrounding properties, the neighborhood, or the community as a whole. We plan on building a single-family home that fits the character and design typical of a Frisco single-family home. Something with a similar look and feel to the pictures of 2 houses included below.

The granting of this variance will not be detrimental to public health, safety, and welfare or injurious to surrounding property values and neighborhood character. A new house in that area will increase neighborhood values and character. We are aware that we will most likely need to improve the alley and put in a new fire hydrant, also adding to the safety and value of the neighborhood.

The granting of this variance shall not be substantially inconsistent with any plans adopted by the Town of Frisco. We are not asking for anything extra, just the variance so a regular, single-family house can be built on the property zoned for it.

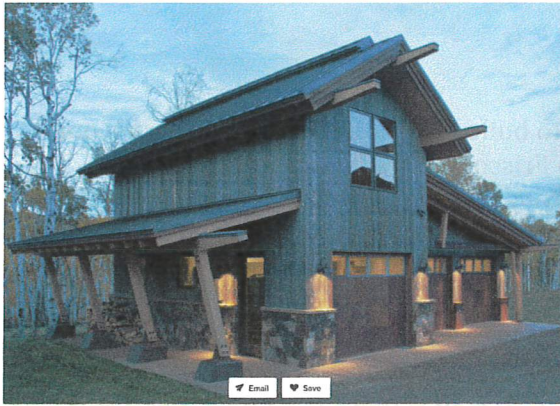
The granting of this variance shall not materially weaken the general purpose of the Zoning Ordinance or it's regulations since this lot was originally deemed buildable at the time of original platting.

This variance, if granted, shall only be to the extent necessary to afford reasonable use of the property. This lot has always been zoned to be built on, and we are hoping that we can do so with said variance.

We are truly hopeful that we can work this out.

Please let us know what questions and or concerns you have.

Jake and Rori Miller 970-389-0584



NORTH

S 89°59'34" E 50.46' (F)

CREEK  
Approx. location south side Ten Mile Creek

WETLANDS

25' SETBACK  
FROM  
10 MILE CREEK

South Edge Floodway, Zone AE  
(overlay, estimate based on available FIRM)

30'

Lot 23

Lot 24

No Improvements  
0.114 Acres  
4975 Square Feet

Proposed House  
Footprint

WETLANDS

S 11°20'08" E 95.02' (F)

4th STREET

10' SETBACK

ADJACENT  
Property

Lot 22

MOIST WETLANDS

N 10°59'37" W 104.76' (F)

45'

Wetlands  
Delineation  
Flag (typ)

wf4

wf5

wf3

25'

25'

[A 25' SETBACK  
DEEMS property  
UNBUILDABLE]

WETLANDS

encroachment

Wood Shed  
(partially  
down)

8.5

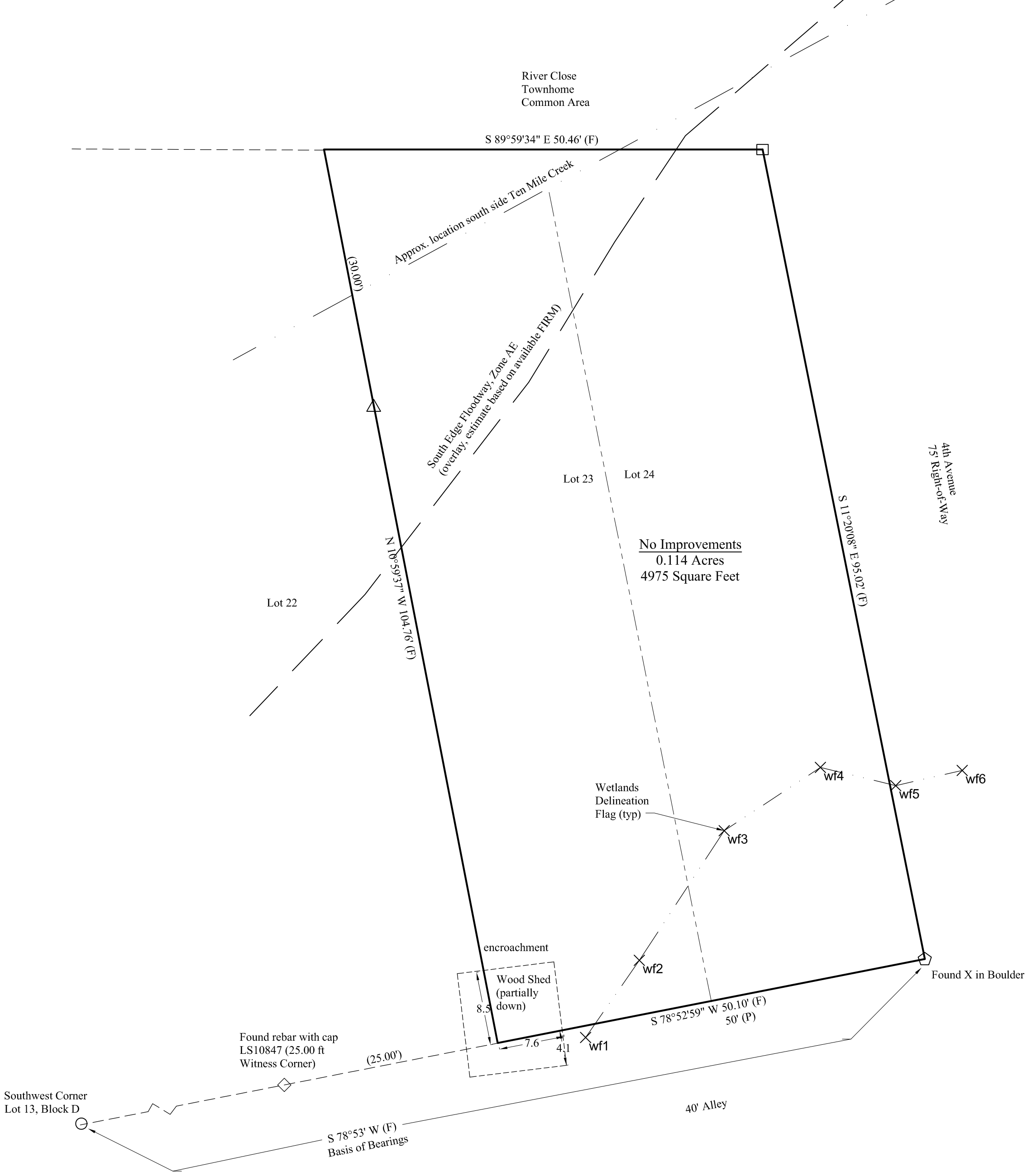
7.6

wf1

S 78°52'59" W 50.10' (F)  
50' (P)

Found rebar with cap  
LS10847 (25.00 ft  
Witness Corner)

(25.00')







**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

November 6, 2019

Regulatory Division (SPK-2019-00666)

Ms. Rori and Mr. Jake Miller  
503 Polar Court 1582  
Silverthorne, Colorado 80498  
[rorimillerrealtor@gmail.com](mailto:rorimillerrealtor@gmail.com)

Dear Mr. and Ms. Miller:

We are responding to your pre-construction notification for a Department of the Army (DA) Nationwide permit for the Lot 23 & 24 Residential Development project. The approximately 0.25-acre project site is located in the Town of Frisco on the south bank of Tenmile Creek, directly east of 4<sup>th</sup> Avenue at Latitude 39.577639°, Longitude -106.098397°, Summit County, Colorado.

Based on the information you provided to this office, the Lot 23 & 24 Residential Development project involves the discharge of fill material into waters of the U.S. for the construction of a residential building, subject to Section 404 of the Clean Water Act. The specific activity that requires DA authorization is the placement of fill materials into approximately 3,233 square feet palustrine scrub shrub and emergent wetlands. The proposed activities would be conducted in accordance with the Pre-construction Notification plans submitted to this office on October 18, 2019.

We have determined that activities in waters of the U.S. associated with the project are authorized by Nationwide Permit Number (NWP) 29 - Residential Developments. You must comply with all terms and conditions of the NWP and applicable regional conditions. Enclosed is information about the NWP terms and conditions and Sacramento District regional conditions for Colorado (Enclosure 1). Within 30 days after completion of the authorized work, you must sign the enclosed Compliance Certification and return it to this office (Enclosure 2).

This verification is valid until March 18, 2022, when the existing NWPs are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date the NWP is modified, reissued, or revoked, you will have 12 months from the date of the modification, reissuance or revocation to complete the activity under the present terms and conditions. Failure to comply with the general and regional conditions of this NWP may result in the suspension or revocation of your authorization.

We would appreciate your feedback on this permit action including your interaction with our staff and processes. For more information about our program or to complete our Regulatory Program national customer service survey, visit our website at [www.spk.usace.army.mil/Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx).

Please refer to identification number SPK-2019-00666 in any correspondence concerning this project. If you have any questions, please contact me at the Colorado West Regulatory Section, 400 Rood Avenue, Room 224, Grand Junction, Colorado 81501, by email at [Benjamin.R.Wilson@usace.army.mil](mailto:Benjamin.R.Wilson@usace.army.mil), or telephone at 970-243-1199 ext. 1012.

Sincerely,

A handwritten signature in blue ink, appearing to read "Benjamin R. Wilson".

Benjamin R. Wilson  
Project Manager  
Colorado West Section

Enclosures

cc:

Jennifer Migliorato, 285 Engineering, Incorporated, [Jennifer@285engineering.com](mailto:Jennifer@285engineering.com)  
Susan Lee, Town of Frisco, [SusanL@townoffrisco.com](mailto:SusanL@townoffrisco.com)

# **PRE-CONSTRUCTION NOTIFICATION NATIONWIDE PERMITTING/JURISDICTIONAL DETERMINATION REQUEST**

Lot 23, Lot 24, Block D, Town of Frisco  
TBD 4<sup>th</sup> Ave  
Frisco, CO 80443

## **Prepared For:**

Rori and Jake Miller  
503 Polar Court 1582  
Silverthorne, CO 80498

## **Prepared By:**

285 Engineering, Inc.  
Jennifer Migliorato  
P.O. Box 1048  
Conifer, CO 80433



September 11, 2019

Revised October 10, 2019



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## Project Contact Information:

### Submitted to:

Intermountain Regulatory Branch Sacramento District – Grand Junction Field Office  
400 Rood Avenue, Room 224  
Grand Junction, Colorado 81501-2563  
970-243-1199

### Applicant:

Rori and Jake Miller  
503 Polar Court 1582  
Silverthorne, CO 80498

### Applicant's Agent:

285 Engineering, Inc  
Jennifer D. Migliorato  
P.O. Box 1048  
Conifer, CO 80433  
719-839-1382  
jennifer@285engineering.com

## ADDITIONAL ATTACHMENTS

Wetland delineation report

## INTRODUCTION

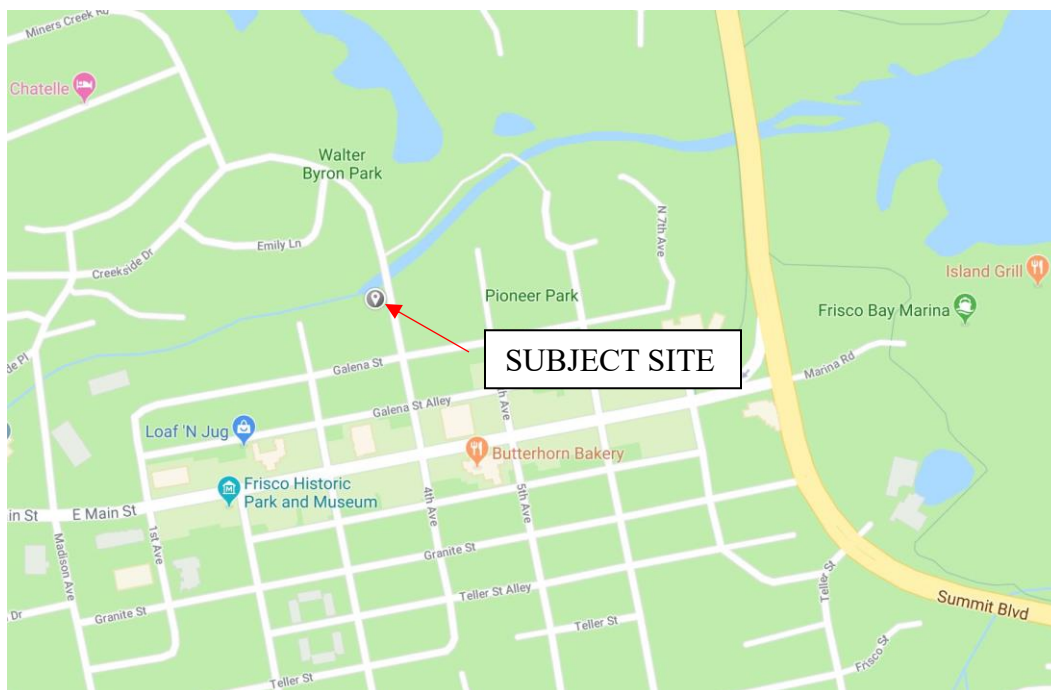
285 Engineering, Inc. is submitting this pre-construction notification (PCN) under criteria set forth in the Nationwide Permitting of the Clean Water Act, Section 404, requesting authorizing of 0.03-acre of temporary/permanent impact to jurisdictional waters/wetlands of the United States.

The activities associated with the PCN consist of the dredge/fill of jurisdictional wetlands for the construction of a single-family residence.

## SITE LOCATION & DESCRIPTION

Lot 23 & 24, Block D, Town of Frisco is an approximately 0.114-acre parcel of land located in Frisco, Colorado. The project site is located in Section 35, Township 5 South, Range 78 West, in Summit County, Colorado. The subject site lies at latitude  $39^{\circ}34'39.75''\text{N}$  and longitude  $-106^{\circ}05'55.13''\text{W}$  with an approximate elevation of 9,070 feet.

Wetlands and surface water are located on the northern side of the parcel, with a small portion of upland area present on the southeast corner of the parcel. A wetland delineation was performed onsite to determine if and where wetlands were located on the property. Wetlands were delineated for the entire subject site and a wetland delineation report has been included with this request.



*Figure 1 – General Vicinity Map*



The proposed project will result in wetland disturbances associated with the construction of a single-family residence.

The proposed project will result in a permanent impact to 3,233 sq. ft. (0.074)-acres of wetland. See wetland Site Plan for more detailed information on location of the proposed disturbance.

4



## AVOIDANCE AND MINIMIZATION

The proposed activities avoid wetland impacts to the extent practicable due to the existing development and terrain of the property, presence of surface water, and lot size constraints. The project will result in a permanent disturbance of wetlands.

Effort has been made to minimize wetland disturbances, while meeting local regulatory requirements.

## ENDANGERED AND THREATENED SPECIES

The purpose of this section is to document and list endangered, threatened or sensitive species within or near the proposed project site.

The following listed and proposed species may be affected by the proposed action:

Amphibians	Anaxyrus boreas boreas	Boreal toad	Summit	Colorado	Under Review
Birds	Centrocercus urophasianus	Greater sage-grouse	Summit	Colorado	Resolved Taxon
Birds	Coccyzus americanus	Yellow-billed Cuckoo	Summit	Colorado	Threatened
Birds	Strix occidentalis lucida	Mexican spotted owl	Summit	Colorado	Threatened
Fishes	Oncorhynchus clarki stomias	Greenback Cutthroat trout	Summit	Colorado	Threatened
Flowering Plants	Eutrema penlandii	Penland alpine fen mustard	Summit	Colorado	Threatened
Insects	Boloria acrocnema	Uncompahgre fritillary butterfly	Summit	Colorado	Endangered
Mammals	Gulo gulo luscus	North American wolverine	Summit	Colorado	Proposed Threatened
Mammals	Lynx canadensis	Canada Lynx	Summit	Colorado	Threatened

There were no critical habitats listed in the location by the U.S. Fish and Wildlife Service (USFWS).



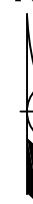
Preliminary review of the project setting and the proposed impact area indicate that threatened and endangered species will not be adversely affected as part of the proposed project.

## SUMMARY

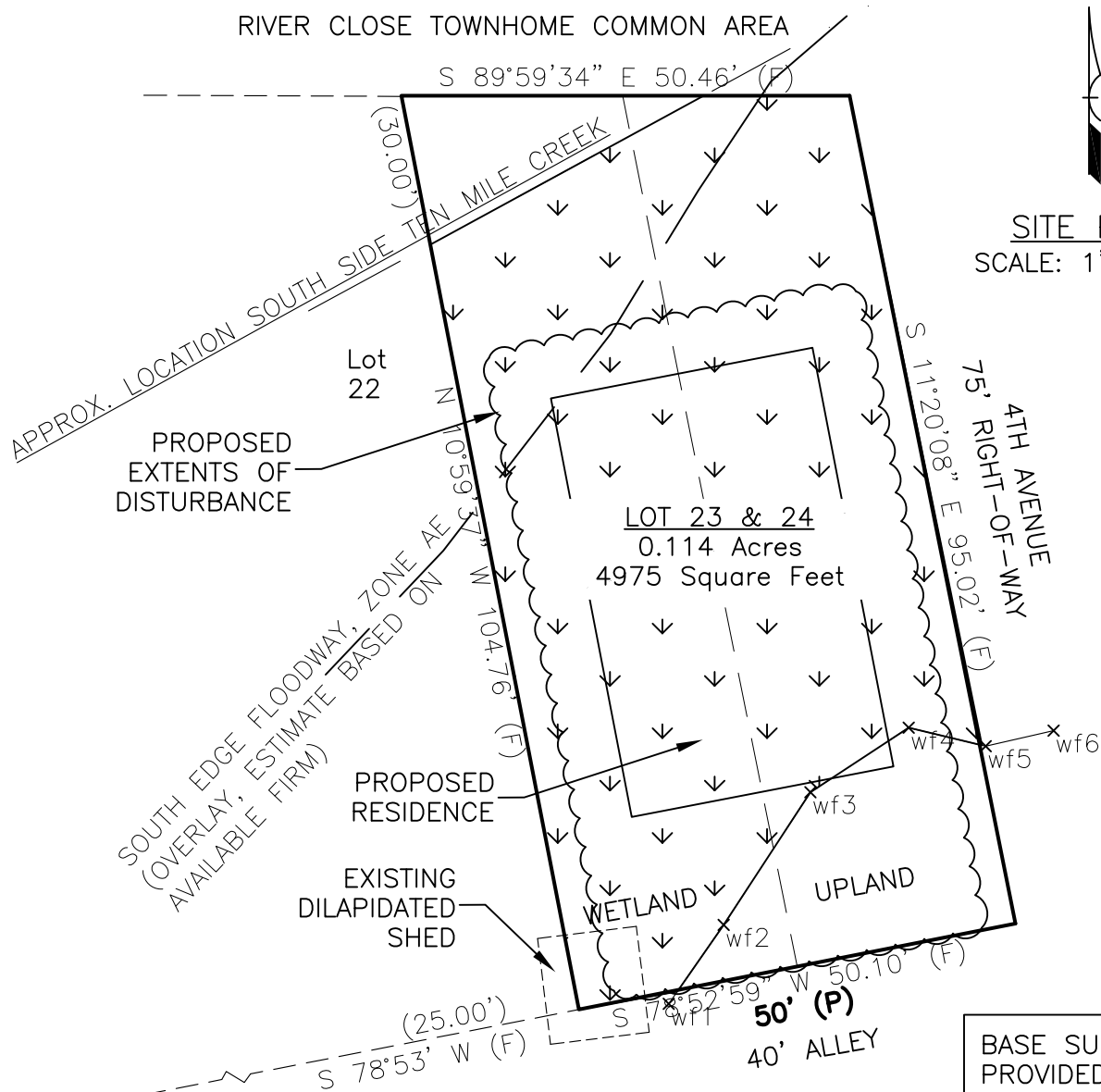
The applicant is requesting authorization under the authority of Section 404 of the CWA and for water quality certification under Section 401 of the CWA for permanent impacts to 0.074-acre of scrub-shrub/emergent jurisdictional wetland to construct a single-family residence.



N



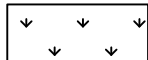


SITE PLAN  
SCALE: 1" = 20'



BASE SURVEYING  
PROVIDED BY BLUE  
RIVER SURVEYING

LEGEND:

-  — PROPOSED DISTURBANCE LIMITS
-  — WETLAND DELINEATION BOUNDARY
-  — WETLAND AREA

STATISTICAL INVENTORY

TOTAL LOT SIZE	4975 SQ FT
WETLANDS ON PARCEL	4093.5 SQ FT
UPLANDS ON PARCEL	881.5 SQ FT
PROPOSED WETLAND IMPACTS	3,233 SQ FT

285 ENGINEERING  
P.O. BOX 1048  
CONIFER, CO  
80433  
(720)-515-1781

**PROJECT #:** 2019267  
**LOCATION:**  
TBD 4TH AVENUE  
FRISCO, CO 80498  
**CLIENT:**  
RORI & JAKE MILLER

DATE: 09/11/2019  
SCALE: SHOWN  
REVISIONS:



Larry and Diane Jensen

37 Cherry Hills Farm Drive  
Englewood, Colorado 80113

Frisco Community Development Department  
Town of Frisco  
PO Box 4100  
Frisco, Colorado 80443

January 31, 2020

To whom it may concern:

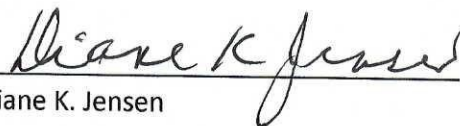
We own a home at 200 N 4<sup>th</sup> Avenue in Frisco, slightly to the north and across the street from lots 23 and 24, Block D, Frisco, for which a variance request has been submitted. We understand this variance request may be considered by the Planning Commission on February 6, 2020.

We wish to register our objection to the requested variance. As we understand the proposal submitted, the lot owners wish to reduce the set back from 4<sup>th</sup> Avenue from the existing requirement of 25' to 10'. A 10' set back would permit the proposed house to be entirely too close to 4<sup>th</sup> Avenue, a major thoroughfare. Aesthetically, we don't believe it is consistent with other homes built along 4<sup>th</sup> Avenue and, from a public welfare standpoint, a 10' set back along a busy street would seem to represent a safety concern.

We understand from the applicants' letter that the Corp of Engineers may have been consulted regarding this proposal. While we are not privy to that input, we are concerned that the proposal, if adopted, could have an adverse impact on the flood plain downstream. Our house sits across 4<sup>th</sup> Avenue from the subject property, with more than 200' of shoreline on the south bank of 10 Mile Creek. While we are currently above the 100-year floodplain, we are just barely so. Should there be a negative impact, it could substantially impact our property. We hope this concern will be adequately considered by the Planning Commission, in evaluating this proposal.

Thank you for considering our concerns.

  
Larry J. Jensen

  
Diane K. Jensen