

BEFORE THE BOARD OF COUNTY COMMISSIONERS

TETON COUNTY, WYOMING

IN THE MATTER OF: Variance (VAR2023-0004)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING A VARIANCE

THIS MATTER came before the Teton County Board of County Commissioners (hereafter “Board” or “Board of Commissioners”) for public hearing on January 16, 2024, upon the application of Rachel Ravitz on behalf of Rodney Lewis for a Variance, pursuant to Section 8.8.2., Variances, of the Teton County Land Development Regulations (LDRs), to vary the 150-foot river setback per Section 5.1.1.D.2.a to build a single-family residence within the setback along Hoback river. The Board considered a presentation from staff. The Board of Commissioners, being fully advised herein, finds, concludes and orders as follows:

FINDINGS OF FACT

1. The property, 22-39-16-26-2-00-007, is owned by Rodney Lewis, which is located off Hoback Junction South Road, consisting of .64 acres in size. The property is zoned Neighborhood Conservation (NC), is within the Natural Resources Overlay (NRO) and is located about .15 miles south of the Hoback Junction Roundabout.
2. The applicant has requested approval of a Variance, VAR2023-0004, to vary Section 5.1.1.D.2.a of the LDRs to allow a single-family residence to be built within the 150-foot river setback along the Hoback River.
3. The public hearings of the Planning Commission and the Board of Commissioners were properly noticed pursuant to Section 8.2.14.C. of the LDRs.
4. This application was originally scheduled for review by the Planning Commission on September 25, 2023. Staff requested a postponement of the application to a date certain of October 9, 2023, to allow for additional response time for the applicant and staff review.

5. On September 25, 2023, the Planning Commission postponed the hearing to October 9, 2023.
6. The application was brought before the Teton County Planning Commission on October 9, 2023
7. The Planning Commission heard a presentation from staff and a presentation from the applicant on behalf of the property owner. The application was discussed, and public comment was taken.
8. The Planning Commission then voted to continue the application to the following meeting on October 23, 2023.
9. This application was again brought before the Teton County Planning Commission on October 23, 2023, with a recommendation from the Planning Director for denial of VAR2023-0004.
10. On October 23, 2023, the Planning Commission voted 1-3(Commissioner Rockey was absent) on a motion to recommend approval of VAR2023-0004. Commissioners Muromcew, Nielson, and Lurie in opposition and Commissioner Viehman in favor. Therefore, the motion failed, and the resulting recommendation was one of denial of VAR2023-0004 from the Planning Commission to the Board of Commissioners.
11. The application was originally scheduled to be heard by the Board of County Commissioners on November 21, 2023. Due to one of the three variance applications not having complete information, the applicant requested a postponement to a date certain, December 19, 2023.
12. On December 19, 2023, the applicant was not ready to present the related and necessary Small Wastewater Facility variance. The Planning Director instructed staff to present the three variances together. Since one of the three applications was not ready to move forward the applicant requested an additional postponement that was reviewed by the Board of County Commissioners.
13. On December 19, 2023, the Board of County Commissioners approved this postponement request and moved the hearing date to January 16, 2024.
14. The application was brought before the Board of County Commissioners on January 16, 2024.

15. A staff report dated January 16, 2024, was submitted to the Board of County Commissioners for review regarding the Variance (VAR2023-0004) pursuant to Section 8.8.2., of the LDRs, to vary Section 5.1.1.D.2.a of the LDRs to allow a single-family residence to be built within 150-foot setback of the Hoback river.
16. As set forth in the January 16, 2024, staff report, the recommendation from the Planning Commission and the Planning Director to the Board of County Commissioners was for denial of the Variance (VAR2023-0004).
17. The Board heard a presentation from staff and a presentation from the applicant on behalf of the property owner. Ted Van Holland of Harmony Engineering also presented on behalf of the applicant.
18. The Board heard public comment on the application. Chair closed public comment, and the Board discussed the application.
19. The Board of County Commissioners reviewed the six findings for a Variance pursuant to Section 8.8.2. of the LDRs which are:
 - a. There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in the neighborhood.
 - b. The special circumstances and conditions have not resulted from any willful modification of the land or building.
 - c. The special circumstances and conditions are such that the strict application of the regulation sought to be varied would create a hardship on the applicant far greater than the protection afforded to the community.
 - d. The variance sought is the minimum variance necessary to provide balance between the purpose of the regulation sought to be varied and its impact on the applicant.
 - e. The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed and is otherwise not detrimental to the public welfare.
 - f. The granting of the variance is consistent with the general purpose and intent of these LDRs.
20. On January 16, 2024, the Board voted on the matter, with no conditions of approval, which vote was 1 to 4 with Commissioner Gardner voting in the affirmative resulting in the motion failing and the Board's denial of the Variance (VAR2023-0004).

CONCLUSIONS OF LAW

I. Based on the presentation and staff report of the Planning Department, the information presented by the applicant and agent, the application from Rachel Ravitz for a 150-foot river setback Variance (VAR2023-0004) does not comply with all applicable provisions of the Teton County Land Development Regulations.

II. The Board concludes and hereby finds that the application dated June 23, 2023, for a Variance (VAR2023-0004) does not comply with and does not meet all six (6) findings required pursuant to Section 8.8.2. of the LDRs to vary Section 5.1.1.2.D.a to allow for a single-family residence to be built within the 150-foot river setback.

1. *There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in the neighborhood.*

Can be made. There are some special circumstances peculiar to the layout of the site that do not apply generally to the neighboring land or buildings. Eighty percent of the parcel contains slopes that are more than 30% so the development allowance is already limited. The parcel is adjacent to both Hoback Junction South Road and the Hoback River and the property is only about 90 feet at its widest point while the river setback is 150 feet, making it impossible to meet the required river setback.

All County Commissioners could make this finding.

2. *The special circumstances and conditions have not resulted from any willful modification of the land or building*

Can be made. The creation of this parcel's legal description occurred prior to our current Teton County Land Development regulations and has remained vacant for over 40 years. This parcel was included as part of a larger legal description in 1966. In 1982 when the current property owner purchased this property, he extracted the existing legal description from a larger legal description and recorded a map of survey outlining the parcel's boundary lines.

All County Commissioners could make this finding.

3. *The special circumstances and conditions are such that strict application of the regulation sought to be varied would create a hardship on the applicant far greater than the protection afforded the community*

Cannot be made. The property is about 90-feet wide and 365-feet long. The river setback is 150-feet, and the rear property boundary runs adjacent to the

Hoback river. Therefore, the entire property is technically 100% within the river setback. Due to the dimensions of the parcel, a structure cannot be permitted unless multiple variances are approved. These dimensions do pose a hardship to the applicant who is trying to develop this unique parcel. But the hardship to the applicant does not outweigh the potential impacts the development of the parcel could have on the surrounding community. This property is within the Natural Resource overlay and located right next to a Wild and Scenic River. In regard to our Land Development Regulations, natural resource setbacks from the Hoback river in combination with the amount of steep slopes occurring on the property could have major impacts to the water quality or erosion with this proposed development. The river setback has been created to protect the community from potential water quality issues and erosion problems. The established setback requirements also protect a riparian wildlife movement corridor, further protecting our natural resources and wildlife. So, although there are unique circumstances that create hardship for the applicant in developing this parcel, they are not greater than the protection afforded to the surrounding community.

Commissioner Gardner and Commissioner Epstein could make this finding. Commissioner Newcomb and Commissioner Macker were silent on this finding. Chair Propst could not make this finding.

4. *The variance sought is the minimum variance necessary to provide balance between the purpose of the regulation sought to be varied and its impact on the applicant.*

Can be made. The applicant has requested to build a single-family home on this parcel. They are asking for relief from this 150-foot river setback as the farthest point of the parcel is less than 100 feet from the river. The applicant proposes this location and design in combination with two additional variances, to make the proposal feasible. The request is for minimal relief as the entire parcel is located within the 150-foot river setback and they propose to build on the farthest edge of the property from the river. If this variance is approved, there may be some impacts to the neighboring community and the Hoback river due to the development and need for the installation of a Small Wastewater Facility, but the relief requested is the minimum necessary to allow any structure to be built on this lot of land.

All County Commissioners could make this finding.

5. *The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed*

Cannot be made. Due to the size of the parcel and its layout, one of the major concerns that planning staff has pertains to water quality. If this variance is approved for the structure to be completely within the 150-foot

river setback, there could be potential issues with both proper snow removal and proper snow storage on that parcel. The engineering department reviewed the Small Wastewater Facility variance and mentioned that snow storage on top of the proposed leach field could lead to potential hazards, depending on the snow load. There is already limited space for snow removal in the area due to the parcel being adjacent to both the Hoback Junction South Road and the Hoback River. One of the only feasible places to store snow is where the leach field is currently being proposed. Having snow storage being proposed on top of a potential leach field or within 150-feet of the Hoback River next to slopes over 30%, could be injurious to the surrounding neighborhood.

Commissioner Gardner could make this finding. The other 4 could not make this finding.

6. *The granting of the variance is consistent with the general purpose and intent of these LDRs.*

Cannot Be made. The intent of this variance request is to allow for a single-family residence to be built on a parcel that, though its creation predates the original LDRs, does not meet the minimum lot size standards for a residential parcel in the NC zone. Due to the lack of a Zoning Compliance Verification, the history of this parcel makes it challenging to track its validity as a residential site. The river setback poses as an issue for developing the parcel as the entire parcel is within 150- feet of the river and over 80% of the property is encumbered within slopes excess of 30%. This variance request is not consistent with the general intent of the environmental and physical standards of the LDRs as well as the intent of the neighborhood.

Commissioner Gardner could make this finding. The other 4 could not make this finding.

IV. These conclusions are based upon the analysis of the findings as detailed in the January 16, 2024, staff report, as well as the Board's analysis of the required findings for the Variance, that occurred at the January 16, 2024, public hearing on the matter.

IT IS HEREBY ORDERED:

The Board **DENIES** the application for a Variance dated June 23, 2023, VAR2023-0004, to vary Section 5.1.1.2.D.a to allow for a single-family residence to be built within the 150-river setback, not being able to make all six (6) findings of approval for a Variance pursuant to Section 8.8.2. of the Teton County Land Development Regulations.

DATED this ____ day of February 2024.

BOARD OF COUNTY COMMISSIONERS
TETON COUNTY, WYOMING

BY: _____
Luther Propst, Chairman

ATTEST: _____
Maureen E. Murphy, County Clerk

CERTIFICATE OF SERVICE

I, Maureen E. Murphy, Teton County Clerk, do hereby certify that I sent a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING APPROVAL OF VARIANCE, postage prepaid by U.S. Mail or other delivery as indicated below on this ____ day of February 2024 to the following addresses:

Rachel Ravitz
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Maureen E. Murphy, County Clerk