
PL20220044 Waterbody Setback

Planning Director's Decision and Findings

ACTIVITY #: PL20220044

DECISION DATE: 7/5/2022

PETITIONER: Erin & Robert Pratt c/o Sustainable Building Solutions

PETITION: Waterbody setback permit for a driveway across a drainage/wetland to construct a single-family home

LEGAL: Daschle Subd Lot 2 Less ROW .70AC per Rec#696654 total 19.30 Acres

LOCATION: 26730 County Road 14

ZONE DISTRICT: AF (Agriculture & Forestry)

STAFF CONTACT: Michael Fitz – mfitz@co.routt.co.us

ATTACHMENTS:

- Site Plan
- Narrative

Site Description:

This property is 19.30 acres along County Road 14. It slopes significantly upward to the east, after a flatter portion adjacent to County Road 14. A waterbody (wetlands/drainage) runs along the front of the lot along County Road 14, which is the only side of the property which abuts a road. Private property abuts the north, south, and east sides. The site is significantly wooded.

Project Description:

This permit application is for a Waterbody Setback Permit to build a driveway across a drainage/wetland in order to access the Pratt's lot in order to construct a single family home. The initial portion of the driveway as it leaves Routt County Road 14 will cross the drainage/wetland and waterbody setback, while the rest of the driveway and all other development on the property will occur outside of the waterbody setback. The crossing location was chose to provide the least impact on the wetland and drainage, as well as the safest location to enter the property from County Road 14.

Staff Comments:

This property is a legal nonconforming 19.30 acre lot, part of the Daschle Subdivision. There is a waterbody/wetlands across the western portion of the lot, which is the only legal access. To use the property for a single-family home, this permit is required to cross the waterbody/wetlands. An Army Corps permit has already been obtained by the applicant.

Compliance with the Routt County Master Plan, Sub Area Plans and Zoning Resolution

The Routt County Zoning Resolution contains regulations regarding land use. Section 5 of the regulations are designed to limit or eliminate conditions that could negatively impact the environment and/or use of surrounding properties, and shall apply in all Zone Districts and to all land uses unless otherwise noted. The following checklist was developed by Planning Staff to highlight the policies and regulations most directly applicable to this petition.

Staff Comments are included at the end, highlighting items where the public, referral agencies, or planning staff have expressed questions and/or comments regarding the proposal. **Staff comments regarding compliance with regulations and policies are noted in bold below.**

Regulations and Standards

Section 5.11 Waterbody Setback Standards and Permits

Section 5.11.2 Applicability

- A. This section shall apply to all water bodies, as defined, in unincorporated Routt County.
- B. This section shall not repeal, override, abrogate, or impair any existing federal, state, or local law, rule, or regulations, or any legal requirement thereunder.

Section 5.11.5 Minimum Setbacks from a Waterbody

All activity, as defined in Section 5.11.6 and excepting those listed in Section 5.11.4, shall be located a minimum of fifty (50) feet from the OHWM of any Waterbody (Waterbody is defined in Section 2) unless a waterbody setback permit is obtained.

Section 5.11.6 Waterbody Setback Permits

Construction of roads, driveways, structures or improvements within the waterbody setback, otherwise prohibited by this section, may be permitted by the Planning Director upon the application for and granting of an Administrative Permit pursuant to Section 3.2.1, and pursuant to the following standards:

- A No such permit shall be issued unless the applicant has shown that the activity proposed within the Waterbody Setback falls into one of the following categories
- A.1 The activity is avoidable. A showing of unavailability may be made by showing at least one of the following to the satisfaction of the Planning Director:
- A.1.a Because of the physical features, other restrictions, and conditions of the Buildable Lot, construction outside of the Waterbody Setback is not technically feasible (i.e. the entire Buildable Lot is within the Waterbody Setback), or would contribute to a hazardous condition on the property;

- A.1.b In the case of a road, the road is necessary to achieve access to the Buildable Lot or to a building site thereon and no other access route which would avoid the Waterbody Setback is technically feasible;
- A.1.c If, in the reasonable judgment of the Planning Director, requiring the proposed construction to take place outside the Waterbody Setback would result in a greater negative impact to the objectives of the Zoning Regulations than permitting limited construction within the setback;
- A.1.d For the purposes of paragraphs (a) and (b) above:
- A.1.d.1 Any such features, restrictions, or conditions of a Buildable Lot which make construction outside of the Waterbody Setback unavoidable, must have been in existence on the original effective date (July 26, 1996) of this section, or been created subsequently through no fault of the owner of land or the applicant; and
- A.1.d.2 Construction outside of the Waterbody Setback may be technically feasible even if such construction requires a different permit or variance to build in the area outside of the Waterbody Setback, in which case the Planning Directory shall grant an Administrative Permit under this section only if the applicant has applied for such other permit or variance and has been denied or, even after grant of such other permit or variance, there remains insufficient area to build outside of the Waterbody Setback.
- B The structure or improvement shall be designed, sited, and constructed in accordance with the currently effective CDOT Erosion Control and Storm Water Quality Guide or other recognized Best Management Practices (BMPs) so as to minimize: (1) the encroachment of the structure or improvement into the water body setback area; and (2) the impact of the structure or improvement on the water quality, drainage, vegetation, wildlife habitat, or other functional characteristics of the Waterbody.
- C It shall be the responsibility of the person proposing the structures or improvement to provide a Restoration Plan (Plan) which is limited to the subject property, and includes, at a minimum, provisions for erosion control, appropriate drainage, grading, bank protection and stabilization, revegetation, native plantings or seedlings, enhancement of wildlife habitat, monitoring and a schedule for monitoring not to exceed five (5) years, and other reasonable factors as the Planning Director may deem appropriate. Said Plan may be required to be prepared under the authority and direction, and submitted by a qualified professional, as detailed in Section 5.11.3. As part of the Plan, the person proposing the structure or improvement may be required to post a performance bond, letter or credit, or other security as may be acceptable to the decision maker, in in conformance with Section 3.2.14 of the Zoning Regulations.

Staff comment: The waterbody(s) are unavoidable in conjunction with access road and driveway construction to serve a new single-family home use. The applicant has applied for and received Grading and Excavation Permit No. PRSW220613. An approved stormwater management plan and appropriate erosion and sedimentation controls are required prior to the issuance of a G&E Permit. A revegetation plan is a required component of a G&E permit.

***Is the application in compliance with the Policies and Regulations outlined above?* **Yes** or No

PLANNING DIRECTOR OPTIONS:

Approve the Administrative Permit request without conditions if it is determined that the petition meets the standards of Section 5.11, Routt County Zoning Regulations.

Deny the Administrative Permit request if it is determined that the petition does not meet the standards of Section 5.11, Routt County Zoning Regulations. Make specific findings of fact; cite specific regulations by number from the Routt County Zoning Regulations.

Table the Administrative Permit request if additional information is required to fully evaluate the petition. Give specific direction to the petitioner and staff.

Approve the Administrative Permit request with conditions and/or performance standards if it is determined that certain conditions and/or performance standards are necessary to meet the standards of Section 5.11, Routt County Zoning Regulations.

FINDINGS OF FACT that may be appropriate if the Waterbody Setback application is approved:

1. The proposal with the following conditions meets the standards of Section 5.11 of the Routt County Zoning Regulations (Waterbody Setback Standards and Permits), as construction outside of the waterbody setback is not technically feasible. The driveway encroaching into the waterbody setback is necessary to achieve access to the Buildable Lots being proposed by the applicant and no other access route that would avoid the water body setback is technically feasible.

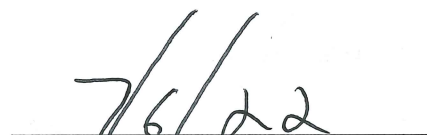
CONDITIONS that may be appropriate may include the following:

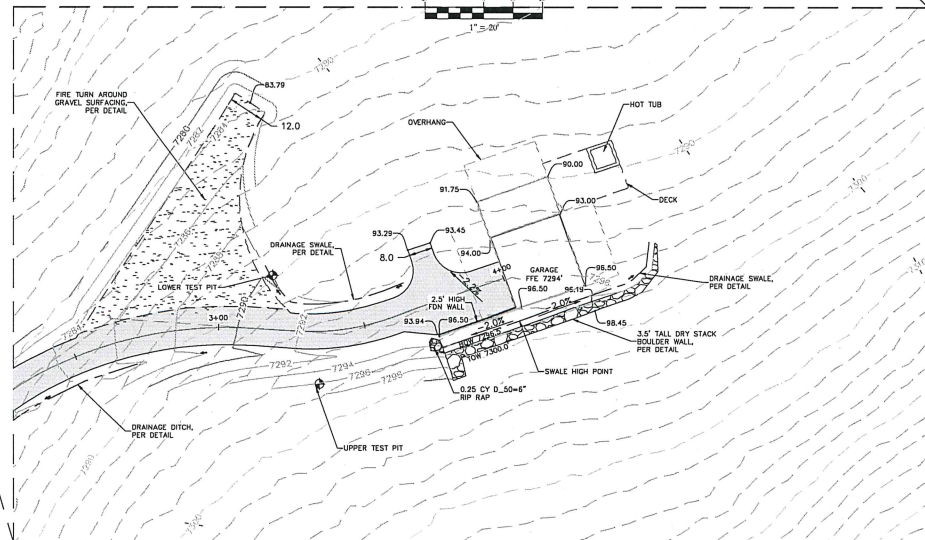
Suggested conditions for Staff consideration in report

1. The Administrative Permit is limited to the project presented in the plans. Any changes must be applied for in a new or amended application.
2. Work shall comply with the terms, conditions and requirements Grading and Excavation Permit #PRSW220613.
3. Work shall comply with the terms, conditions and requirements of the Army Corps of Engineers Permit #SPA-2022-00078.
4. Accessory structures/uses associated with this permit can be approved administratively by the Planning Director.
5. Revegetation of disturbed areas shall occur within one growing season with a seed mix which contains wetland vegetation indigenous to the area and that avoids the use of aggressive non-native grasses.
6. This approval is contingent upon acquisition of and compliance with any required federal, state and local permits; the operation shall comply with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to the commencement of operations.

I hereby approve this Waterbody Setback Permit.


Kristy Winsor, Planning Director


Date 7/6/22



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Pratt Water Body Setback Permit Narrative

1. Description of Proposed Encroachment: This permit application is to build a driveway across a drainage/wetland in order to access the Pratt's lot in order to construct a single family home. The initial portion of the driveway as it leaves Routt County Road 14 will cross the drainage/wetland and waterbody setback, while the rest of the driveway and all other development on the property will occur outside of the waterbody setback. The crossing location was chose to provide the least impact on the wetland and drainage, as well as the safest location to enter the property from County Road 14.
2. Evidence of Unavoidability: The drainage/wetland area runs along the property's entire County Road 14 frontage, and there is no other way to access the property than from County Road 14 and across the drainage/wetland.
3. Description of Best Management Practices: All work on the driveway conducted in the Waterbody Setback will be done in accordance with the Best Management Practices outlined in the Colorado Department of Transportation's Erosion Control and Stormwater Quality Guide (<https://www.codot.gov/programs/environmental/water-quality/documents/erosion-storm-quality>).
4. Mitigation Plan for Significant Negative Impacts: Although significant negative impacts to the wetlands and waterbody setback areas are not anticipated on this project due to it's very small scale (0.03 acres of wetlands impacted), the best management practices referred to above will be followed, as well as all applicable Routt County Zoning Mitigation Techniques listed in Routt County Zoning Regulations Section 6.7 (Mitigation Techniques to Reduce Water Quality and Quantity impacts) and 6.11 (Mitigation Techniques to Reduce Wetlands impacts). Specific Mitigation Techniques are listed under the Erosion Control Notes on the Site Plan.
5. Reclamation Plan: All disturbed areas that are not paved or a natural rock surface will be revegetated with native vegetation within one construction season per Erosion Control Notes on the Site Plan and stipulations in the Army Corp of Engineers Permit.