

**Minutes
of the
Stormwater Management Committee (SWMC)
March 2, 2017

8:15 AM
700 Second Avenue South
Howard Office Building, Sonny West Conference Center**

STORMWATER MANAGEMENT COMMITTEE

(Quorum Required: Four Members)

Committee Members Present:

Ms. Ronette Adams-Taylor
Mr. Dodd Galbreath
Anna Maddox, P.E.
Mr. Slade Sevier, P.E. – Vice Chairman
Mr. Lance Wagner, P.E. – Chairman

Committee Members Absent

Mr. Roy Dale, P.E.
Ms. Debra Grimes

I. CALL TO ORDER

The meeting was called to order at 8:15 a.m.

II. APPROVAL OF FEBRUARY 2, 2017 MEETING MINUTES & DECISION LETTERS

Ms. Anna Maddox moved and Mr. Dodd Galbreath seconded the motion to approve the meeting minutes and decision letters for the February 2, 2017 meeting. Ms. Ronette Adams-Taylor, Mr. Galbreath, Ms. Maddox, Mr. Slade Sevier, and Mr. Lance Wagner voted in favor of the motion.

III. STORMWATER MANAGEMENT COMMITTEE AGENDA

Comments were solicited from the Planning and Codes Departments for the following Agenda items.

1. **201600036**
2655 Miami Avenue (Single Family Residential)
APN 05209015100
2. **201600037**
2659 Miami Avenue (Single Family Residential)
APN 05209015300

3. 201600038

2661 Miami Avenue (Single Family Residential)

APN 05209015400

Inspector: (Kimberly Hayes)

CD-15 (Jeff Syracuse)

APPLICANT'S REQUEST: All three cases were previously deferred on December 1, 2016. On January 5, 2017, a motion failed to approve the variance requests. The Appellant has submitted a written request for rehearing for each case stating that they "...believe the Committee's decisions on January 5, 2017, were made based on incomplete and inaccurate information." and has provided exhibits which the request states is "...new evidence which could not reasonably be presented at the previous hearing." The original variance request for each case is to allow the following:

- 1) Disturbance of the 50' Zone 1 of the 75' floodway buffer of the Cumberland River for construction of a single family residence, including a porch, steps, and deck on the ends of the house.
- 2) Disturbance of the floodway of the Cumberland River to construct cantilevered portions of the house over the floodway maintaining minimum low chord of the structure approximately 6' above the 100-year flood elevation (BFE=421.1'). The cantilevered portions will include 2 balconies and 1 living space area.
- 3) Modified buffer signage (with alternate wording as approved) and placement as shown on the record plan (each property line at existing tree line).
- 4) Continuous mowing of the buffer to the edge of the existing tree line as shown on the record plan.

APPELLANT: Precision Homes, Inc. (Mr. Gil Smith)

REPRESENTATIVE: Mr. Walter Davidson and Mr. Shawn Henry

COMMENTS:

SW STAFF: Previous SW Staff Comments (Jan. 5, 2017) are as follows:

- 1) This area of Miami Ave. was substantially inundated during the May 2010 flood. (GIS)
- 2) Post May 2010 flood, Metro purchased 11 properties adjacent to and within this same area (1/3 mile), including an unfinished single family residence previously owned by Mr. Smith, Parcel 152, 2657 Miami Ave. (GIS)
- 3) The buffer regulations became effective September 1999. Mr. Smith purchased the lots on March 19, 2004.
- 4) Stormwater Staff has evaluated the purchase or swap of Mr. Smith's property, and based on the asking price (\$98,000/vacant lot, \$269,000/lot developed), it has been determined that there is no opportunity to purchase or swap the lots. The pre-2010 flood Property Assessor value was \$70,200/lot. The current Property Assessor value is \$1,500/lot.

Current Comment: The Appellant has provided a submittal for a request for rehearing; however, Staff does not believe any "... new evidence has been submitted which could not reasonably be presented at the previous hearing.", per Section F1.1.6 of the Stormwater Management Manual. At the meeting, Staff will be available to respond to the Appellant's statement regarding "... incomplete and inaccurate information." and to the evidence submitted.

CODES: No comment provided.

PLANNING (P. Napier): Previous Planning Comment (Jan. 5, 2017): Defer to Stormwater Staff.

Current Comment: Planning will not have further comments for these cases, the previous comments from Stormwater provide an effective premise for not granting a variance for any of the lots along Miami Avenue.

GREENWAYS (C. Harrison): Previous Revised Greenways Comment (Jan. 5, 2017): "Shain Dennison and I visited the 3 residential sites on Miami Ave (on 11/30/16) and met with the engineer and developer. We agreed to not object to their variance requests on the condition that they grant a Greenways Conservation easement and show it on their drawings, install permanent signs that indicate

that a greenway will be constructed in the future and that they will install a crusher run trail at the time the units are constructed which Metro will later pave to meet our greenway standards for design.”

Original Comment: “The Greenways Division is opposed to the granting of a variance permitting disturbance of the 75’ buffer. It conflicts with the conservation mission of the greenways system to protect the land along water corridors. The Greenways Division also requests a Greenway Conservation Easement if this property is developed.”

Current Comment: “Greenways comments remain unchanged from the revised comments we presented at the last meeting.”

Public Comments (received via email) were read into the record:

1. Councilman Jeff Syracuse, District 15, stated: “Paula, I cannot attend this meeting but please record my alignment with neighbors and do not support this rehearing and variance.”
2. Ms. Dorothea Hartley, 2667 Miami Ave., stated opposition to the variance requests.
3. Ms. Michele Voan Capps and Mr. Jimmy Capps, 2672 Miami Ave., stated concern about the variance requests.
4. Mr. Richard Loller, 2313 Pennington Bend Road, President - Pennington Bend Neighbors Assoc., stated opposition to the variance requests.
5. Ms. Carol Grace Anderson, property owner on Pennington Bend, stated support of the variance requests.
6. Ms. Kim Sorenson, 2627 Miami Ave., stated opposition to the variance requests.
7. Mr. Phil Claiborne, former Councilman – District 15, stated opposition to the variance requests.
8. Ms. Pam Miller, President – River Glen HOA, stated opposition to the variance requests.

Mr. Shawn Henry (Tune, Entrekin & White) presented the request for rehearing. Mr. Walter Davidson (engineer) and Mr. Gil Smith (property owner) were also in attendance. Mr. Henry stated that the three lots are not within the floodplain, and the bufferyard encroachment is rather miniscule – the roof coverage is <400 sq. ft., and regarding the lot coverage, factoring in the foundation of one home and driveway is under 800 sq. ft. The roof alone is <5% of the lot area, and the driveway factored in with the foundation is <10%. Mr. Henry summarized the nine exhibits submitted in the request and also discussed aspects of a previous case (SWMC 201600024 – Watertower) and what are similarities: three single family homes on three lots on Miami Ave. and a seven-story multi-family structure on First Ave. containing hundreds of potential residents, both involving cantilevering over the floodway, are elevated well above the floodplain boundary, involve bufferyard encroachments, and are accessed by a single road.

He stated three reasons that were given by one of the Committee members during the January 5, 2017 meeting to approve the variance (the motion failed):

1. There is no way to develop the property without a variance.
2. The property is consistent with the FEMA regulations.
3. There was not much difference in how other properties similarly situated have received variances to encroach in the bufferyard by this Committee.

He also stated that the Watertower project proposed to provide some form of mitigation, and his client had proposed to provide similar mitigation (landscaping, bioretention). He further stated that the net effect is that if they are unable to present more thorough evidence for due deliberation, the property has been condemned, and Metro has taken deliberate efforts in the past two administrations not to condemn property. If his client is unable to build three homes on the three lots, they have an inverse condemnation situation.

There was further discussion regarding the new evidence. Mr. Dodd Galbreath asked Staff why their comment was that they did not believe there was sufficient new evidence, to which Mr. Tom Palko, Assistant Director – Stormwater Division, responded that all of the information is out there. He briefly discussed the May 2010 operation of Old Hickory Dam, which is well established, and stated that the Watertower is on a bluff – during a 100-year flood, water will not flow around both sides of the building and cut that building off – it is just on one side. Mr. Galbreath also asked a procedural question of whether the applicant or either of his representatives had any conversations with any board member prior to today's meeting about the rehearing, to which they all indicated no. Lastly, Mr. Galbreath stated that based on what new evidence was presented, he did not see how it changes the initial decision. He differentiated that the Watertower site was more accessible to emergency personnel and no new development on the river side had been approved nor is desired – there is already new development taking place in the downtown sites. It appears on the river side they are being consistent, and consistent and judicious in the downtown site (Watertower) in his perception. Mr. Henry responded that they would like the opportunity to present the comparative facts and those factors need to be fully vetted by the Committee. He again stated that the property is not in the floodplain, and the elevated concern is not deserving.

Ms. Theresa Costonis (Metro Legal) responded to Mr. Henry's prior statement regarding inverse condemnation (taking) and stated her disagreement with that concern. She disagreed that it should be an issue of consideration for the Committee and is beyond the scope of what the Committee is tasked with to determine and should look at it in terms of today they are here for the request for rehearing. She also stated that she believes the Committee acts by a vote of the majority of a quorum and did that on January 5th - it was a no vote on a motion to approve as opposed to a yes vote on a motion to disapprove. There was a final decision (denied their variance), which could have been appealable.

Mr. Slade Sevier stated that he did not think the Watertower information was new information but a second argument, or the facts of that case are any different than all cases they hear. It was also determined that the site does get blocked off on both sides (of First Ave.). He agreed with Mr. Palko that the evidence was available, but not something the Committee would have expected them to bring. Mr. Galbreath stated that the primary driver was that it is rare that they grant variances for the Zone 1 buffer. The emergency access would have been the secondary driver, and the tertiary driver to him would be the consistent application of Metro policy on that side of the river on this site as opposed to the opposite side of the street. Mr. Lance Wagner stated that he did not see a lot of new information, but clarification. He also stated that in going way back, he has used the life, health, and safety on previous variances – to consider not putting first responders in harm's way to get to something that does not need to be there.

Mr. Galbreath moved to deny the request for rehearing on the basis that the new information presented does not substantially change the Committee's understanding of why they denied the request to approve originally. Also to clarify in response to one of Mr. Roy Dale's previous comments that there are already a lot of houses there, he had stated that one of his concerns was that they were adding three more houses to the burden of first responder responsibilities, and the goal was to try to minimize what has already happened on the opposite side of the street and not increase more burdens on the river side of the street and to be consistent.

Mr. Sevier commented that he had a hard time to dismiss someone's constitutional rights when making a decision and it seemed to him that applying the Zone 1 buffer in this manner takes away the property owner's ability to use this property reasonably as would have been expected when he purchased the

property, which is a taking in his personal view. Mr. Wagner clarified that when he purchased the property the buffers were in place, to which Mr. Sevier stated that they often grant variances in these situations and evidence that would have been reasonable would have been the fact that the property was trading at a value which showed it to be a developable value – now it’s not. At the time it was purchased it was, and they would have had a reasonable expectation to develop the property. Ms. Costonis responded that the reason we do not consider this to be an inverse condemnation or a taking is because what the Committee does is an exercise of regulatory authority, it is acting using the Metro government’s police power to protect the public health, safety, and welfare – that is distinct and distinguishable from a taking of property interests that Metro might conduct in the context of a condemnation of property, and they do not think the two are the same. Mr. Sevier felt it was an arbitrary and capricious decision because he does not believe they apply the same standards to everything. They would typically provide a variance for it. Mr. Galbreath also commented that the Committee’s first effort was to try to find a way to have the property purchased. Based on his study of takings, his recollection was that a taking was a complete removal of all economic opportunity for a piece of property, and there are still some other economic options for this property – selling it to a conservation land trust, to Parks/Greenways, to a non-profit. Mr. Wagner seconded Mr. Galbreath’s motion. Mr. Galbreath restated, for clarification, his reason for the motion to deny the request – he did not think they had made a strong enough case with their list of possible evidence to require a rehearing. Ms. Costonis read the exact language from Appendix F of the SWMM: “...new evidence which could not reasonably be presented at the previous hearing.” Mr. Galbreath voted in favor of the motion, and Ms. Ronette Adams-Taylor, Ms. Anna Maddox, Mr. Sevier, and Mr. Wagner voted against the motion. The motion failed. Mr. Sevier made a motion to grant the request for a new hearing based on the fact that new evidence has been presented that could not have reasonably been presented because those issues aren’t typically discussed at this meeting. Ms. Maddox seconded the motion. Ms. Adams-Taylor, Ms. Maddox, Mr. Sevier, and Mr. Wagner voted in favor of the motion, and Mr. Galbreath voted against the motion. The motion carried.

IV. ITEMS OF BUSINESS

Ms. Rebecca Ratz (Metro Parks) presented a request for a special meeting regarding Variance #201600023, Mill Creek Soccer Complex (Orchard Bend) to address plan modifications during the technical review process and to meet the narrow window of time recommended for field sprigging by mid-June. Mr. Stephen Karas (Collier Engineering) was also in attendance. Mr. Lance Wagner called for the special meeting to be held on March 17th with the time and place to be worked out with Staff.

V. ADJOURNMENT

The meeting was adjourned at 9:26 a.m.

Metropolitan Stormwater Management Committee

Approved:

By: _____
Secretary

Date: _____