

(Revised)
Minutes
of the
Stormwater Management Committee (SWMC)
April 6, 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:

Mr. Roy Dale, P.E.
Mr. Dodd Galbreath
Ms. Debra Grimes
Ms. Anna Maddox, P.E.
Mr. Slade Sevier, P.E. – Vice Chairman
Mr. Lance Wagner, P.E. – Chairman

Committee Members Absent

Ms. Ronette Adams-Taylor

I. CALL TO ORDER

The meeting was called to order at 8:18 a.m.

II. APPROVAL OF MARCH 17, 2017 MEETING MINUTES & DECISION LETTER

Ms. Debra Grimes moved and Ms. Anna Maddox seconded the motion to approve the meeting minutes and decision letter for the March 17, 2017 meeting. Mr. Dodd Galbreath, Ms. Grimes, Ms. Maddox, Mr. Slade Sevier, and Mr. Lance Wagner voted in favor of the motion.

Mr. Roy Dale arrived at the meeting.

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)

Council District: 15 (Jeff Syracuse)

APPLICANT'S REQUEST: REHEARINGS – All three cases were previously deferred on December 1, 2016. On January 5, 2017, a motion failed to approve the variance requests. The Appellant submitted written requests for rehearings which were granted by the Committee on March 2, 2017, with the rehearings to be held on April 6, 2017. 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. Shawn Henry and Mr. Walter Davidson

COMMENTS:

PREVIOUS SW STAFF COMMENT (DEC 1, 2016):

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 the Appellant, Parcel 152, 2657 Miami Ave. (GIS)
3. Question: Regarding the Landscape Mitigation Plan, did the applicant consider locating mitigation plantings near the existing tree line versus near the proposed residence?

PREVIOUS SW STAFF COMMENT (JAN. 5, 2017):

- 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.

PREVIOUS SW STAFF COMMENT (MAR. 2, 2017): In addition to the comments from Jan. 5th, Staff had the following additional 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.

CURRENT SW STAFF COMMENT: Staff does not support buildings in the Zone 1 buffer.

CODES: No comment provided.

PREVIOUS PLANNING COMMENT (DEC 1, 2016): Defer to Stormwater Staff.

PREVIOUS PLANNING COMMENT (JAN. 5, 2017): Defer to Stormwater Staff.

PREVIOUS PLANNING COMMENT (MAR. 2, 2017): 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.

CURRENT PLANNING COMMENT: Same comment as Mar. 2.

PREVIOUS GREENWAYS COMMENT (DEC 1, 2016): Shain Dennison and I visited the 3 residential sites on Miami Ave yesterday 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.

PREVIOUS GREENWAYS COMMENT (JAN. 5, 2017): Same comment as Dec. 1.

PREVIOUS GREENWAYS COMMENT (MAR. 2, 2017): Greenways comments remain unchanged from the revised comments we presented at the last meeting.

CURRENT GREENWAYS COMMENT: No additional comments from Greenways Division. (Same comment as Dec. 1.)

Previous public comments (received by email), for the March 2, 2017 meeting, were read into the record from the following individuals:

1. Councilman Jeff Syracuse (District 15) – stated opposition to the rehearing request.
2. Dorothea Hartley, 2667 Miami Ave. – stated opposition to the rehearing request.
3. Michele Voan Capps & Jimmy Capps, 2672 Miami Ave. – stated concern about the rehearing request.
4. Richard Loller, President - Pennington Bend Neighbors Assoc., 2313 Pennington Bend Rd. – stated opposition to the rehearing request.
5. Carol Grace Anderson, P.O. Box 148258 – stated support of the variances requested.
6. Kim Sorensen, 2627 Miami Ave. – stated opposition to the rehearing request.
7. Phil Claiborne, former Councilman District 15 – stated opposition to the variance request.
8. Pam Miller, President - River Glen HOA – stated opposition to the variance request.

Current public comments (received by email) were read into the record from the following individuals:

1. Jeannie Seely – stated opposition to the variance request.
2. Kim Sorensen, 2627 Miami Ave. – stated opposition to the variance request.
3. Carol Grace Anderson, P.O. Box 148258 – stated support of the variances requested.
4. Betty Blackwell – stated opposition to the variance request.

Mr. Shawn Henry, Mr. Walter Davidson, and Mr. Gil Smith were in attendance. Mr. Henry provided copies of and discussed a 2-page memorandum with information on the following: a) setback variances granted, b) development plans, c) Stormwater Management Manual (SWMM) criteria regarding appeals involving modifications to buffer area, and d) reasons for requesting approval of each appeal case. He also responded to public comments that were submitted.

Mr. Davidson provided handouts of a visual presentation in which he discussed the proposed plans and a typical section, physical characteristics of the sites, mitigation, and homes constructed or under construction in the vicinity of Miami Ave. and Wooddale Ln., along with those that have received variances. Metro Staff provided a Corps inundation map of the area for the March 1975 (previous flood of record) and the May 2010 flood and presented maps identifying currently vacant parcels, occupied homes, and Metro-purchased properties. An overview was also given of the number of variances granted (post 2010 flood) for construction of single family homes on vacant lots that were within the buffer. There was further discussion regarding the lots, floodplain, flooding, rebuilding of substantially damaged buildings in the floodway, FEMA mapping of floodplain, and flood hazard.

Mr. Roy Dale made a motion to approve the variance with the condition that prior to building any house on this lot, they must go to FEMA and must do a Letter of Map Revision (LOMR) indicating that this property is not in the floodplain. There was further discussion regarding the LOMR. Mr. Dale further clarified that the LOMR must show that the buildable areas are above the 100-year floodplain. Mr. Dale stated that he made the motion based upon: 1) they laid out their rationale behind why they should be granted a variance, and they meet those reasons, 2) at the same meeting they disapproved this variance, they approved one that was exactly the same scenario, 3) it is nice to be able to live in an area and have a park-like setting, but there are people that own property there that do have property rights, 4) the parcel is above the flood elevation, and 5) the buffer is clearly an encumbrance to the property which normally does not allow them to build on without a variance. Mr. Slade Sevier seconded the motion.

Mr. Dodd Galbreath stated that there were 2 issues on the table: the floodplain regulations and the buffer regulations, which he expanded on further. He also discussed Metro's policy of not encouraging or facilitating development in this area, and the different policy focus for a denser area along the riverfront. There was additional discussion regarding eligibility for Metro buyout. Mr. Dale and Mr. Galbreath each made further comments regarding the purpose of the buffer for water quality. There was additional comment regarding a FEMA LOMR, landscape mitigation, and landscape mitigation not providing a metric-for-metric replacement.

Ms. Anna Maddox stated that she did not like that the area is prone to flooding, but the house will be elevated seven feet above the 100-year floodplain and 2.5 feet above the 500-year elevation. She does not like buildings in Zone 1, but they are only disturbing 25' of the 50' Zone 1 and are providing significant mitigation. Mr. Sevier stated that the task of the Committee is to grant a variance on a property that when the stormwater regulations are applied, it creates a hardship to build what is reasonably expected on that property. He spoke regarding: 1) the inconsistency with existing homes on the river side and homes continuing to be built throughout the area and trying to deny the variance just based on safety concerns, 2) the water quality buffer and previous variances being granted, and 3) Metro regulating to the 100-year floodplain. Ms. Debra Grimes stated that she would love to see Metro recapture the riverfront, but she would have a hard time denying it when Planning approved it, Metro is unwilling to buy it, they are doing the mitigation that is needed, they have met the criteria as outlined by their attorney, and they have met the ordinances. There was clarification by Staff that there was a front setback variance granted by the Board of Zoning Appeals (BZA); however, Planning's comment was that previous Stormwater comments "...provide an effective premise for not granting a variance for any of the lots along Miami Ave."

There was further discussion regarding Stormwater review and permitting, after which Mr. Dale stated that a condition of the variance would also be that a Non-Conversion Agreement must be recorded for each individual parcel. Mr. Sevier seconded the amendment. Mr. Dale, Mr. Sevier, and Ms. Maddox

voted in favor of the main motion with amendment. Mr. Galbreath, Ms. Grimes, and Mr. Lance Wagner voted against the motion. The variance was not granted because the motion failed. Mr. Wagner stated that the reasons for his vote were that: 1) the area is very prone to flooding and more development in the area will be a safety risk for first responders and increase the risk for Metro to provide services in a flood scenario, 2) FEMA had not weighed in to say that they agree that the area is outside the floodway and floodplain, 3) Staff is not in complete agreement with it being outside the floodplain because of the FEMA Map saying so, 4) it is burdening the taxpayers and the city with more development area that does not need to be developed due to the flood risks, and 5) there will be loss of the Zone 1 buffer.

4. 201700002

Miles Property Industrial Site Improvements
0 Murfreesboro Pike & 570 McGavock Pike
APNs 12000015400 & 13400001300

Inspector: (Shawn Herman)

Council District: 13 (Holly Huevo)

APPLICANT'S REQUEST: Variance request is to allow the following:

- 1) Disturbance and encroachment of the floodway and 75' floodway buffer (50' Zone 1 and 25' Zone 2) of Mill Creek for the construction of a portion of roadway widening and grading.
- 2) Continuous mowing and maintenance of the entire disturbed buffer area.

APPELLANT: Barge Cauthen & Associates, Inc.

REPRESENTATIVE: Mr. Jeff Hooper

COMMENTS:

SW STAFF: Stormwater Staff has no additional comments and will defer to the Committee.

CODES: No comment provided.

PLANNING: Defer to Stormwater for review.

GREENWAYS: The Greenways Division requests a greenways conservation easement along the Mill Creek frontage of the property.

Ms. Anna Maddox recused herself from the case.

Mr. Daniel Smola gave an overview of the site constraints, proposed project, and the variance request. Mr. Jeff Hooper and Mr. Lewis Agnew were also in attendance.

Calculations were provided for the amount of material being offset for the expansion of McGavock Pike, and they have not only accounted for the floodplain offset on the site of the proposed development but also provided 500 cubic yards of additional river and floodplain storage as a good faith attempt to try to improve what is already a flood situation in the area. A section of compacted gravel driveway within the existing buffer will be removed and replanted, to return the area to a native state. They also met with Metro Parks and provided exhibits to grant a conservation easement along the southern boundary of the site that will run along the north side of Mill Creek along the entire length of the property. They will also give a conservation easement along the west side of the property to provide pedestrian access along the south side of the property up to Bel Air Drive.

There was discussion regarding the landscape mitigation plan. Mr. Smola also stated that Level 2 bioretention areas have been sized to 115-150% of the required volume in order to provide some additional treatment capacity. Mr. Lance Wagner asked about wetlands delineated on the site, to which Mr. Smola stated that they were granted Construction General Permit approval with TDEC. Mr. Wagner asked if there were any wetlands around the expansion of McGavock Pike, to which Mr. Smola stated not

that they were impacting – a hydrologic determination has been done, and there are no identified wetlands other than the pocket that is isolated within the buffer area (as shown on the plan).

After discussion during the Executive Session of the Committee on April 6, 2017 and review of the information presented, Mr. Dodd Galbreath made a motion to approve with the following standard Conditions #1-2. Mr. Roy Dale seconded the motion. Mr. Dale, Mr. Galbreath, Ms. Debra Grimes, Mr. Slade Sevier, and Mr. Lance Wagner voted in favor of the motion.

1. The Appellant shall have the landscaper who installs the required mitigation plantings to certify to MWS Stormwater – NPDES Office, in writing (referencing Variance #201700002), once plantings are installed per approved variance plans and again once plantings have been found to meet a two full growing season requirement. The owner shall maintain a minimum of 75 percent survivability of plantings through two full growing seasons.
2. This variance will expire on April 6, 2018. However, if a Grading Permit, Stormwater Single Family Permit, or Building Permit is issued within that period, the variance expiration date will run concurrent with that permit expiration date. The variance is valid only so long as the plan presented to the Stormwater Management Committee does not change. The variance is valid only so long as the plan presented to the Stormwater Management Committee does not change.

The reasons for approval were that: 1) there are some significant constraints that are primarily being dictated by airline safety, 2) the applicant made an excellent effort to try to avoid first and to mitigate where they could not avoid, 3) they have a reputation of doing these kinds of projects well, 4) Staff did not present any objections, 5) it is not ideal, but it is a good faith effort and a solid technical effort.

Mr. Lance Wagner moved to swap the order of the last two cases, and Mr. Slade Sevier seconded the motion. The motion was approved by Mr. Roy Dale, Mr. Dodd Galbreath, Ms. Debra Grimes, Ms. Anna Maddox, Mr. Sevier, and Mr. Wagner.

5. 201700005

T-Mobile Colocation
105 West Webster Street
APN 05108000900

Inspector: (Katherine O'Hara)

Council District: 08 (Nancy VanReece)

APPLICANT'S REQUEST: Request is to allow disturbance and encroachment of the 75' floodway buffer (50' Zone 1 & 25' Zone 2) of Gibson Creek for construction of an elevated utility platform with ice bridge, trenches for underground utilities, and installation of erosion prevention and sediment control (EPSC) measures.

APPELLANT: Crown Castle USA

REPRESENTATIVE: Mr. Scott Jackson

COMMENTS:

SW STAFF: The landscape mitigation plan (Drawing No. L1) lists Northern Sea Oats in the plant schedule. Please verify that it is a native species.

CODES: No comment provided.

PLANNING: Defer to Stormwater for review.

GREENWAYS: The Greenways Division defers to Metro Stormwater comments.

Mr. Scott Jackson gave an overview of the project and the variance request. Mr. David Stampe was also in attendance.

After discussion during the Executive Session of the Committee on April 6, 2017 and review of the information presented, Ms. Anna Maddox made a motion to approve with the following standard Conditions #1-2. Mr. Roy Dale seconded the motion. Mr. Dale, Mr. Dodd Galbreath, Ms. Debra Grimes, Ms. Maddox, Mr. Slade Sevier, and Mr. Lance Wagner voted in favor of the motion.

1. The Appellant shall have the landscaper who installs the required mitigation plantings to certify to MWS Stormwater – NPDES Office, in writing (referencing Variance #201700005), once plantings are installed per approved variance plans and again once plantings have been found to meet a two full growing season requirement. The owner shall maintain a minimum of 75 percent survivability of plantings through two full growing seasons.
2. This variance will expire on April 6, 2018. However, if a Grading Permit, Stormwater Single Family Permit, or Building Permit is issued within that period, the variance expiration date will run concurrent with that permit expiration date. The variance is valid only so long as the plan presented to the Stormwater Management Committee does not change. The variance is valid only so long as the plan presented to the Stormwater Management Committee does not change.

The reasons for approval were that they are removing a lot of impervious area, installing new plantings, and will be above the flood elevation.

Mr. Roy Dale left the meeting.

5. 201700004

5135 and 0 Hickory Hollow Parkway
APNs 16300007100 & 16300007000

Inspector: (Kenneth Tranter)

Council District: 32 (Jacobia Dowell)

APPLICANT'S REQUEST: A Notice of Violation (NOV) and Stop Work Order (SWO), SR# 830338, was issued to the site on February 1, 2017 (with a \$1,400 penalty) for the following violations:

- 1) Grading/Filling without Permit
- 2) Inadequate Erosion/Sediment Controls
- 3) Buffer Disturbance
- 4) Clearing of 12+/- acres of property located in the floodway

Per the NOV, the following remediation is required to comply with Metro Code:

- 1) Install EPSC around all interior streams.
- 2) Schedule a hearing with the Stormwater Management Committee (SWMC) with a request to include buffer restoration plan approval.
- 3) Obtain any/all applicable State and/or Federal Permits.

Following the NOV, the Applicant is requesting a SWMC variance from the following items in Sections 3.3 and 6.9 of the Stormwater Management Manual related to MWS - NPDES Office enforcement:

- 1) SWMC approval of the buffer restoration plan
- 2) SWMC approval for the proposed work associated with the restoration plan within the floodway/floodplain/no-disturb stream buffer

3) Waiver of the requirement which requires a grading permit prior to disturbance within the floodway and buffer

Since being notified of these regulations, adequate erosion prevention and sediment control (EPSC) measures have been installed on the site, and these EPSC measures have minimized soil erosion and sedimentation and are preventing sediment from leaving the site. Consequently, the Applicant believes no variance is needed from Section 2.7 at this time.

APPELLANT: 5135 Hickory Hollow LLC

REPRESENTATIVE: Mr. Sam Parish

COMMENTS:

SW STAFF: Stormwater Staff comments are as follows:

1. What was the purpose of the disturbance and what was the rationale regarding proceeding without verification of: a) whether or not any local, state, or federal permits were required, and b) the work is approved and would be compliant with current floodway, floodplain, and water quality buffer requirements and/or any other local ordinances?

2. Please provide the name and contact information (name, address, phone number, and email address) of the contractor(s) that performed the work that is the subject of the violation.

3. Regarding the Buffer Restoration Plan (Figure 7):

a. The green cross-hatched area is identified as a “Proposed Seed and Straw Area - 4.75 Acres”, and the application narrative states that spreading a native herbaceous seed mix is proposed to diversify the plant community, create additional habitat for wildlife, and limit potential obstructions within the floodway. There was previously existing habitat prior to the disturbance. Staff recommends that if the variance is approved, a condition be added that the buffer restoration plan be modified to require planting of trees within this area.

b. The plan states “Tree and shrub species will be planted randomly approximately 12 foot on center...”. If using seedlings, they should be on 6’ centers. The following buffer restoration guidelines are provided by Staff as an alternate to using seedlings:

Vegetation should be planted using the following guidelines:

- Canopy Trees – 44 trees/acre (31.5’ centers), minimum 2” caliper measured 6” above grade
- Understory Trees – 131 trees/acre (18.3’ centers), minimum 1” caliper measured 6” above grade
- Shrubs – 232 shrubs/acre (13.7’ centers), minimum 18” spread or height
- Total plants – 407 plants/acre (10.3’ centers)

The percentage of canopy trees, understory trees, and shrubs can vary by 10%, as long as the total number of plants/acre = 407. No one species should compose more than 20% of the total. The center spacing guidelines are averages and should vary throughout the buffer to obtain a natural appearance (not rows of vegetation). Smaller plants may be used; however, the planting density will need to be increased. A 4”-6” high ring of mulch with a diameter between 2’-3’ should surround each plant. Mulch or mowing may be used to control vegetation for the first few years until the new plants are established.

c. The plan states “...no species will compromise more than 1/3 of the total planted trees/shrubs.” No one species should compose more than 20% of the total.

d. Mulch berms should not exceed 3’ in height.

4. The applicant has submitted the following correspondence regarding TDEC and the Corps of Engineers:

a. 3/9/17 email in which the applicant sent a follow-up email to April Grippo (TDEC) and provided her a copy of the variance application and restoration plan. The applicant stated to Ms. Grippo: “*Based on our*

conversation, it is my understanding that TDEC is not requiring a Construction General Permit for this Site at this time because EPSC measures have been installed and are currently preventing erosion and controlling the migration of sediment at the Site. Additionally, no additional grading or excavation work is proposed, and we are only proposing to stabilize the Site by mulching, replanting, and/or seeding disturbed areas. It is my understanding that TDEC will review and provide comments on the plan submitted to Metro but is not requiring any additional submittals to TDEC at this time.”

b. 3/7/17 email in which the applicant provides a copy of a 2/20/17 response letter to John Leffew (TDEC) stating: *“As per your letter of February 7, 2017, I am writing to advise you that no grading/excavation will occur without written authorization from the Division. The only activities at the site, unless we obtain applicable permits, will be to correct the violations we have received, which measures are to install silt barriers, seed/straw to cover the ground and bank stabilization material. All of these actions have been approved, viewed and inspected by Metro Stormwater as described below.”* (which includes a copy of a 2/14/17 email from Kenneth Tranter (MWS) stating: *“... compliance has been achieved with regards to required EPSC installation,...”*). A copy of the original 2/7/17 letter from Mr. Leffew on the Subject: Notice of Violation, Complaint #42300, is also attached stating: *“In order to begin bringing this site into compliance you should submit a written response to this office describing the actions you have taken to correct the violations noted in this letter.”*

c. 3/7/17 email in which the applicant contacted Mark Carnes (Corps) to request meeting for a site visit. The applicant states: *“At this time, we do not believe that federal permitting is required because it does not appear that any fill was placed in Waters of the US. However, we are working to coordinate a Site visit with them.”*

Staff Question: Do any State and/or Federal compliance activities needed on the site reconcile with the Remediation Plan submitted as SWMC plan of record?

5. If the variance and buffer restoration plan are approved, Staff requests that a condition be added that only minimal disturbance shall be allowed.

CODES: No comment provided.

PLANNING: Defer to Stormwater for review.

GREENWAYS: The Greenways Division requests a greenways conservation easement along the Mill Creek frontage of the property.

Mr. Bill Farmer introduced other attendees and gave a brief overview of the case. Mr. Kenneth Tranter (MWS Stormwater – NPDES Site inspector) was in attendance. Mr. David Jackson (BDY) and Mr. Sam Parish (BDY) were also in attendance.

Mr. Farmer stated that the property was purchased to be held for later investment. He gave a brief overview of the events that led to the Notice of Violation (NOV)/Stop work Order (SWO) being issued – contracted cleaning of the site (being used by others as an illicit dumping site), which ultimately led to the clearing of the 12+ acres.

Mr. Roger Lindsey (MWS Stormwater) read an email from Council Lady Jacobia Dowell expressing her disappointment that the clearing was done with no consideration for our laws and the environment. She referenced her recent discussion with an adjacent property owner who stated that he was hoping to construct high density luxury villas and shared that it connects with the subject property that would provide plenty of free space. She stated that they experience flooding and water pooling in the area, and she is very concerned with impending development at Hickory Hollow Pkwy and the intersection. She would like the plan to include replanting trees near the ditch line along Blue Hole Rd. Council Lady Dowell arrived at the meeting and provided additional brief comments regarding not a lot of respect for

the environment around her community and her desire to see a more comprehensive plan put in place for the area.

An email from Ms. Carol Ashworth, 919 Caruthers Ave., was read into the record in which she expressed: 1) concern for the loss of 12 ac. of floodway and associated natural resource benefits (flood protection, habitat, clean water and air), 2) a need to protect/manage our natural resources, and 3) a request that a comprehensive restoration program be carried out at the developer's expense and additional enforcement be implemented.

Mr. Tranter gave a PowerPoint presentation regarding the events leading to him issuing the NOV/SWO and the Appellant's installation of erosion prevention and sediment control measures that are currently being monitored and inspected.

Mr. Parish gave a PowerPoint presentation providing information about the site and its history, events leading to the NOV/SWO being issued, current site conditions, proposed restoration plan specifications, and response to Metro Comments. He stated that N & L Construction (Franklin, TN) is the contractor and provided the company contact info for the record. He also stated that the total disturbance was nine acres. He gave a detailed overview of the key components of the Restoration Planting Plan, including advantages of the herbaceous prairie in the floodway. He stated proposed revisions to the plan, provided responses to Staff comments based on guidance previously provided by Staff, and stated that the use of certain vegetation (based on approximate cost) would be cost prohibitive. He stated that the proposed restoration plan would not conflict with anything the State or Federal agencies might require, and the landowners are willing to consider the Greenways conservation easement, but the details are unclear. He did state that the details could be worked out.

Mr. Dodd Galbreath asked questions, to which Mr. Parish responded, regarding the NOV (variance requirement triggered appearance before the SWMC), seed type used for stabilization (fescue), amount of trash removed (still some remaining), Corps documentation (no letter), any alteration to the tributary (no evidence of it), and would the prairie be allowed to reforest (they would consider it – their thought was to bush hog every couple of years to maintain the prairie).

There was further discussion regarding proposed prairie, tree plantings to return to a forested condition, concern with clearing of buffer areas prior to development, mitigation for the amount of disturbance, and prevention of invasive plant growth.

Mr. Galbreath made a motion to approve the variances, as proposed, with the following Conditions #1-2 and #6 and Standard Condition #5. Staff stated that a grading permit would not be required for this specific disturbance. There was further discussion regarding NPDES Staff working with the Appellant and his professionals to fulfill the Committee's decision and preference that the prairie area go back to forest. There was also discussion regarding the owner holding the property to be able to do the restoration or potential sale of the property and transferring to a new owner. Mr. Farmer stated that the owner's current plans were to buy and hold the property for investment and not develop. He expressed concern that this was a punitive action to which Mr. Galbreath responded. Mr. Farmer stated that they hope to work with Staff and their professionals and develop it in a way that makes sense and has some economic feasibility to it and actually make the property better than it was, and he did not know if the owner would hold the property forever. Ms. Theresa Costonis (Metro Legal) responded that if they had gotten a grading permit before the work had been done, they would have had to file a Declarations (of

Restrictions and Covenants) and Long-Term Maintenance Plan and record it as assurance that future buyers would have followed the requirements.

Mr. Lance Wagner seconded the motion and added Condition #3 below. Mr. Galbreath accepted the amendment. Ms. Costonis stated that it may not need to be in perpetuity, but if at some point a forestation state is reached that is back to what Staff considers is equivalent to what it was before, it would end at that point, but she would defer to Staff. Mr. Galbreath stated that it was a well thought-out plan; however, even though they agree there is flexibility for the meadow to turn into a forest on its own over time, there is a desire to try to establish what was there originally and try to make up for what was lost in mature trees.

There was further brief discussion regarding a Greenways conservation easement. Mr. Slade Sevier made a motion to amend to include Condition #4 below. Mr. Galbreath and Mr. Wagner accepted the amendment. The amendment was approved by Mr. Galbreath, Ms. Debra Grimes, Ms. Anna Maddox, Mr. Sevier and Mr. Wagner. The main motion with amendment was approved by the same. In summary, the variance was granted with the following conditions:

1. Staff shall work with the Appellant in developing a Long-Term Maintenance Plan with the goal of this eventually becoming a forested floodplain.
2. A yearly report shall be provided to the Committee, updating the Committee on the status of the completion of the Long-Term Maintenance Plan so that they know it is being taken care of and being re-established.
3. A Declaration of Restrictions and Covenants and the Long-Term Maintenance Plan, referenced above and to be reviewed and approved by Staff, shall be recorded with the Davidson County Register of Deeds against the Appellant's property and shall constitute real covenants that shall run with the land.
4. The Appellant shall provide a Greenways conservation easement (along the Mill Creek frontage of the property).
5. The Long-Term Maintenance Plan shall provide that the Appellant shall have the landscaper who installs the required mitigation plantings to certify to MWS Stormwater – NPDES Office, in writing (referencing Variance #201700004), once plantings are installed per approved variance plans and again once plantings have been found to meet a two full growing season requirement. The owner shall maintain a minimum of 75 percent survivability of plantings through two full growing seasons.
6. This variance will expire on April 6, 2018. However, if the work per the revised Staff-approved buffer restoration plan is started within that period, the variance expiration date will run concurrently with the expiration date of the Long-Term Maintenance Plan so as to achieve adequate site re-establishment as determined by Staff.

IV. ITEMS OF BUSINESS

There were no items of business.

V. ADJOURNMENT

The meeting was adjourned at 12:03 p.m.

Stormwater Management Committee
April 6, 2017
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Metropolitan Stormwater Management Committee

Approved:

By: _____
Secretary

Date: _____